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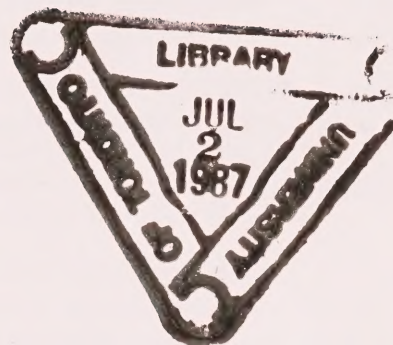
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
ORGANIZATION

TUESDAY, APRIL 29, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fisa, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

McLean, A. K. (Simcoe East PC) for Ms. Fisa

Clerk: Mellor, L.

Witness:

From the Ministry of the Attorney General:

Ewart, J. D., Director, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, April 29, 1986

The committee met at 4 p.m. in room 228.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect a chairman.

Mr. O'Connor: What this committee needs for a change is an honest, fair-minded, experienced chairman, someone who will guide us over the tremendous judicial nurdles that will face this committee during the next several montns; someone who can maintain peace between us; someone who has experience in this field. I nominate the member for Sarnia, Andy Brandt.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare the nominations closed and Mr. Brandt elected chairman of the committee.

Mr. Chairman: I want to thank Mr. O'Connor for his singular show of support and the members of the committee for their overwhelming support. I am delighted to be back in the chair again and to provide you with the kind of evennanded leadership to which you have become so accustomed in the past.

Having said that, I welcome our clerk back again. We have had tremendous co-operation from our clerk during the past session and I look forward to an even better performance in the future.

On behalf of all our members, I extend a very warm welcome to our newest member, Christine Hart, newly elected to the Legislature and obviously appointed to the most important committee in the House because of the confidence the Premier has in her. I am sure the work of this committee will be intriguing for you and I think you will find it most interesting.

If Ms. Hart would like a moment to say a couple of words by way of her own personal introduction, we are not as formal here as we are in the House. You are welcome to say hello or whatever you would like at this time, and then we will carry on with the business of the committee.

Mr. Callahan: You can even say goodbye if you like.

Ms. Hart: No, I would just like to say thank you for your warm welcome. I am delighted to be here. I know there is a lot of work to catch up on, but I will do my best to do that and I hope I can contribute. Thank you.

Mr. Chairman: Thank you very much. The second item of business, members of the committee, is the election of the vice-chairman to the committee. I look to the floor for nominations for that position.

Mr. Villeneuve: May I take the liberty of nominating someone who is not here today but who has been member of this committee over the past period of time? The member for St. George, Ms. Fish.

Mr. Chairman: Ms. Fish is known to most of you, and I would ask that this nomination be placed.

Are there any further nominations? A second and a third time, there are no further nominations? I declare nominations closed. Ms. Fish has been elected to the position of vice-chairman.

Mr. Cooke has a motion with respect to the transcription, I believe. I would ask him to place his motion and speak to it at this time.

Mr. D. R. Cooke: I move that, unless otherwise ordered, a transcript of all committee hearings be made. I think it would be a delightful thing to have so we could add it to our libraries, and when we are browsing by the fireside some time in the future, we can read some of the exciting things that were said on this committee.

Mr. Chairman: Any comments?

Ms. Gigantes: In the light of our past experience with the speed with which we got transcripts, we might add a little note, "As soon as possible," or words to that effect.

Mr. Chairman: Like in the current year.

Ms. Gigantes: No. Like in the current week.

Mr. Chairman: I see. I know your chairman in the last session, a gentleman for whom I have great respect and who worked very hard on your behalf, whose identity shall not be disclosed at this time, did go through the exercise of attempting to speed up the Hansard of our hearings and presentations. We had some difficulty because of an overloading of work in the offices. The clerk may have some comment on that. If you do, by all means.

Clerk of the Committee: The Hansard offices have been experiencing great difficulty. As you know, they have moved, and then their equipment was not up to snuff. Right now they are experiencing difficulties because they are computerized now and they have a power problem, which we have all been experiencing in the building. We have a power problem, and the transformers are being worked on every night, so they are having to shut down early. Even though they have brought on extra staff, they cannot keep going. They are trying to catch up as quickly as possible.

Ms. Gigantes: They have taken on extra staff now?

Clerk of the Committee: Yes. They are in the process of training extra staff at the moment, but last night, I believe, they had to shut down at six because they were working on the power system.

Mr. Chairman: For my benefit and perhaps for that of other members of the committee, may I ask Mr. Cooke to expand a little bit on exactly what he means? Are you thinking about this in a bound book form? What are you intending to do?

Mr. D. R. Cooke: I am delighted as a new member to find that each committee has its own designated colour. What I envisage is the clerk finding a brand-new and exciting colour for justice. That colour would be a colour that would be acceptable to all parties, of course, but not--

Mr. Chairman: Plaid?

Mr. D. R. Cooke: Plaid, perhaps. I do not envisage something that would be bound, because the weight of our words is heavy enough, I think.

Mr. Chairman: Without question. Is the motion sufficiently descriptive to indicate what Mr. Cooke wants?

4:10 p.m.

Mr. D. R. Cooke: I am prepared to amend my motion to add "as soon as possible," since I do not think that really binds Hansard particularly, but we need to get this motion passed.

Mr. Chairman: Given that Ms. Gigantes moved the ASAP on that particular motion, I know that this is almost always consented to by this committee whenever Ms. Gigantes moves an amendment. I just took it that you would include that.

Mr. D. R. Cooke: I am quite anxious to include Ms. Gigantes's views in my motion.

Mr. Chairman: All right. I will call the motion now.

All in favor?

Opposed? Mr. Callanan, did you twitch your hand? I just wanted to make sure there was unanimity on the committee.

Motion agreed to.

Mr. Chairman: The next item of business is the operational budget which has been circulated, I believe, to all members of the committee. I would like you to take a moment to look at it if you have not seen it up until this point in time.

This is an estimate of what we anticipate the committee's costs will be. Let me point out that one of the heavier items is for advertising and again, we are trying to project the committee's feelings to a certain extent. But when we get into hearings, and I say this in part for Ms. Hart's information, it has been the experience that this committee has a preference for rather wide advertisements to indicate the work of the committee and to invite participants to come in and make presentations to us. That involves circularization of advertisements through most of the major newspapers, if not all of them, across the province.

On Bill 7, for example, we did do extensive advertising. I can tell you that the amount in there is relatively small-c conservative. It is not an overwhelming amount. Not knowing exactly what the committee's wishes might be in the upcoming year, that is a figure that the clerk has spoken to me about and which I feel is reasonably adequate. That can be moved up or down, depending on your decision later on in the year when we discuss advertising.

Again, I am only doing this on the basis of the track record in the past.

Mr. O'Connor: You have quite correctly stated that these are generalized figures and we cannot, at this point, figure out what we need in the various categories in order to assist that process. I am wondering if it might be wise to defer item 4 in the budget and to discuss item 5 which may

give us a better understanding on what we have ahead of us. We can then come back to item 4 to determine some of those generalized items. We may be in a better position then to know whether we have to advertise at all or travel at all and so forth. I, for one, am aware that we have to deal with Bill 7 on a clause-by-clause basis but I am not sure what else is before the committee prior to the summer.

Mr. Chairman: I do not know if we can be particularly helpful on five, if I can jump forward and discuss that a bit. In future business, we had in mind the scheduling of this committee with respect to Bill 7. That did not really involve a lot of budget items because it is just a carryover of what we have been involved with and we are now getting to the amendments on that. But with respect to future business, that will depend on the decision of the House leaders and what we are given. I hear rumours, as I am sure you do from time to time, as to the kind of work we might get. I cannot anticipate what that might be.

Mr. D. R. Cooke: A question, Mr. Chairman. What has been referred to us at the moment, besides Bill 7?

Mr. Chairman: That is all of the work that we have been given but as we near completion of Bill 7, I fully anticipate we will get something else.

Mr. D. R. Cooke: What about estimates?

Clerk of the Committee: They will be referred later.

Mr. D. R. Cooke: Nothing has been--

Clerk of the committee: Not at the moment.

Mr. Chairman: We will get a full agenda of estimates. We will normally get up to about a half of a dozen ministries that will be put in our package of responsibilities. Those are the estimates of the various ministries that come before the committees. So we will get those as a normal course. I was thinking more of other bills or other work the government may determine in discussion with the House leaders that could come our way.

Mr. Warner: Thank you. I am a little concerned about the budget. Because it is for 1986-87, it takes in the entire year. There is not any allowance here, should the committee be moving from place to place, which may or may not be necessary, depending on the type of legislation which is sent here. For example, I do not know where the pay equity bill is going. I would assume, just for a starters, that if the pay equity bill came here, the committee may wish to entertain submissions from the public in various communities across the province. There is no allowance in the budget for that. I am not sure how you address a budget in terms of things which we do not know.

Ms. Gigantes: Put it in through estimates.

Mr. Warner: Yes. But I think it is through one of two routes: Either we make some kind of guesstimate, which would entail additional money set aside in case of public hearings or we explore the possibility of putting in a supplementary budget, depending upon particular legislation coming to this committee.

Mr. Chairman: You are absolutely correct on the latter point in

particular. This budget before you is an operational budget and can be expanded to include a supplementary request for funding should a future responsibility entail travelling or some additional expenses that are not foreseen at this particular time. That point was discussed and there would be no problem, I would suppose, in including a line in the budget for travelling now, other than that it would strictly be a guesstimate based on information that we do not have before us. But if you will accept the information I am giving you, to the effect that you can put in the supplementary later, then we can proceed, to cover your point off, on the basis of this budget.

Mr. Warner: I appreciate that. Could I ask further? Under translation services, you have set aside \$500. Could you explain translation? What are you referring to?

Clerk of the Committee: Translation is just for purposes of any letters that may go out in the immediate future. If we have a situation where we are having a couple of hearings where translation facilities would be required, and a decision is made, then I would get an estimate to cost it out and put it in a supplementary budget at that time.

Mr. Warner: I see. I raise this because there are two specific things about which I am concerned. One is that there should be sufficient funds available that we can provide simultaneous translation in both our official languages should it be requested. Two, should translation services be requested by hearing-impaired people, we should provide that service. Off the top of my head, that \$500 probably would not go too far in either of those situations. I would accept that a supplementary budget could be put in. My preference would be to beef up the amount that is in there, but if you can assure me that a supplementary budget would be acceptable, so that no request for translation would be denied on the basis of funds, then I am prepared to accept that.

Clerk of the Committee: There is no difficulty with that.

Ms. Gigantes: I move that we accept the proposed budget.

Mr. Chairman: Any further comments on the budget? All in favour of the budget? Okay. That is carried.

The time for our upcoming meetings is Monday and Tuesday afternoons and this is taking into account the new schedule we are working under. Is there any motion needed for that?

4:20 p.m.

Clerk of the Committee: No. Do you want to proceed next Monday with the clause by clause of Bill 7?

Mr. Chairman: It is understood that on Monday, Bill 7 will be back before us. With the committee's concurrence, we will be proceeding clause by clause on Bill 7. I believe all amendments are in on Bill 7 from both the government and the third party. My understanding is that the amendments from the Conservative Party have not been put in yet.

Mr. O'Connor: They have not been tabled yet. You are quite correct. I anticipate I will be able to do that, as far as my amendments go, on Monday next.

Ms. Gigantes: There are two points I would like to raise. One is that I have further proposed amendments for which I have not provided copies, as our Clerk has so kindly asked us to do. If the Conservatives are going to bring forward their amendments next Monday, could I leave these with the Clerk now? Perhaps I could ask her to make copies for us.

The second thing is that the amendments that are going to be proposed are amendments that relate to some amendments that the government has put forward to the Mental Health Act. Actually, there are three points I would like to raise. They are of a relatively complex nature for those of us who have lost what familiarity we had with the Mental Health Act. I am concerned that they be dealt with in a given time period during which, in fact, we could invite people from not only the Ministry of the Attorney General, but also perhaps from the Ministry of Health to be with us to give us some information as we go along in our consideration of amendments. They are relatively complex, I think. So I would propose, if it is acceptable to the rest of the committee, that we try to set an order in our business, at some point, in which we deal with the Mental Health Act amendments.

I think of all amendments that we will be dealing with, those are probably the ones that will give most of us the most trouble in terms of our being sure of what we are doing. Once we have set such a date--and I do not propose that we do it today, here, now--we should ask for assistance from the Ministry of Health and in particular--I think the woman's name I would like to suggest is in my notes. I have it written down. I will get it to Mr. Chairman. I wonder if that motion would be acceptable to the rest of the committee?

The third point I wanted to raise was the question of the order in which we are dealing with the amendments. The bill, as it stands, is divided as to subject area under the equality rights legislation and within each of those subject areas is an alphabetical ordering. For example, the Human Rights Code is not part of the current makeup of the bill and I would like to know whether we will be dealing with that under O or under H?

An Hon. Member: A big decision.

Mr. Gigantes: Ontario Human Rights Code or Human Rights Code.

Mr. Chairman: I think that it will be at the discretion of the Ministry. So I have asked for comment.

Mr. Ewart: It is my understanding from discussions with legislative counsel that the procedure they expect is that the bill would continue in alphabetical order, so that we would reach the Human Rights Code when we finish with whatever bill in the present Bill 7 started with G and before the one starting with I. We would simply reach it in that order.

Ms. Gigantes: No, it is not set out that way in the bill. The bill is divided into five categories and the alphabetical listing is within those categories. There is age; there is sex--

Mr. Warner: The Human Rights Code is not one of those categories.

Mr. Ewart: I know that. I think that in the index, the summary of the bill, at the beginning, is broken by categories, but the bill itself, if my recollection is right, simply goes in alphabetical order by statute.

Ms. Gigantes: So it would come under H or under O?

Mr. Ewart: It is Human Rights Code in the statutes now. So it would come under H. While it is not in the bill now, the advice I have is that the way to deal with it would be to do it in its normal alphabetical order, because it will be added, for example, as section 17a of this bill. So you want to deal with it between sections 17 and 18, which puts it in alphabetical order. That, of course, is up to the committee, but that is legislative counsel's suggestion.

Ms. Gigantes: That is very helpful.

Mr. Chairman: Is there any problem with that way of proceeding?

Mr. D. R. Cooke: We have not answered Ms. Gigantes's question yet. Her first question is whether or not we could have some help from the ministry when we are dealing with her amendments. May I ask whether she has sought any help in drafting her amendments from the ministry's officials?

Ms. Gigantes: Not directly, no.

Mr. Chairman: The question then is whether we can get the attendance of Ministry of Health officials here with respect to that particular part of the bill. Do you want to comment on that as well?

Mr. Ewart: Yes, thank you Mr. Chairman. We had spoken with the Ministry of Health in relation to those amendments. They were in fact quite anxious to be here. It would certainly be to their great convenience if the committee would set a time for it. I think they were planning to attend as much as they could and try to juggle their time to be here. If that could be done, they will certainly be here to provide assistance on those amendments.

Ms. Gigantes: Good. That is great.

Mr. Chairman: Can we proceed as scheduled for Monday and then work in time--

Ms. Gigantes: May I ask another question related to that? Does that mean whenever M comes up, we deal with it and we try to guess beforehand when we deal with M? Or do we set a day and we say look, we are going to deal with them on such or such a day and give people advanced notice?

Mr. Chairman: I think we will have to guess when it might come up and if we are off, we can set aside some business and go to that when the staff are here and then go back to the regular business.

I think it is terribly inconvenient and quite expensive, quite frankly, for the government to have people sitting around doing nothing while we are discussing things and they are in the audience providing no assistance. So I think we can be a little flexible on that point, Ms. Gigantes, and anticipate when we need them, invite them for that time, and if the timing is out of whack, for whatever reason at that period, we will insert them and then go back to our business. Is that agreeable?

Mr. Warner: I personally appreciate that. I know the complexity. Some members may have forgotten, but we were dealing with the Mental Health Act some time back and it is a very complicated piece of business. The other thing I want to raise is that I certainly appreciate and respect the request

made that all amendments be made in advance and 20 copies brought to the committee for distribution in advance of the discussion. Of course, we are mindful that under the rules and procedures, any member is entitled to make amendments at any time when our section is open. So there may be a great burst of inspiration at any moment during these discussions.

Mr. Chairman: It has not happened in the past.

Mr. Callahan: It happens now.

Mr. Warner: There is a first for everything, including inspiration.

Mr. Chairman: I think it is understood that we will look forward, with some degree of anticipation, to those bursts of inspiration that will come forward. Anything further?

That being all of the business of the committee, I would ask for a motion to adjourn. Having received one from Ms. Hart, we will now adjourn until Monday.

The committee adjourned at 4:28 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT

MONDAY, MAY 5, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarboroughn-Ellesmere NDP)

Substitution:

Poirier, J. (Prescott-Russell L) for Ms. Hart

Clerk: Mellor, L.

Staff:

Schuh, C., Deputy Senior Legislative Counsel (French)

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

Ewart, J. D., Director, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, May 5, 1986

The committee met at 3:56 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

Mr. Chairman: Members of the committee, can we get under way now? My intent is to deal with housekeeping matters rather than with clause by clause so that we will not take up the valuable time of the Attorney General (Mr. Scott) when he is able to attend.

I want to have some discussion with the members of the committee in regard to the way in which we are going to proceed with clause by clause, and also to get some indication of what you want to do about future scheduling, which is going to be a problem, recognizing the date of the budget release and some other complications you may want to address and bring to the committee's attention.

In connection with the bill before us, let me indicate that the clerk has provided all of you with the bill and the tabled amendments to its various sections. We will be dealing with them in chronological order.

I have asked for the committee's understanding when we do have the Ministry of Health staff with us for the discussion on the part of the bill that relates to section 31. We are going to have to establish a date for the attendance of ministry personnel at that time. The understanding I had from the committee is that when those staff people are in attendance, we will simply set whatever we are doing in the bill aside, move to section 31 and then go back to the appropriate section if we are not quite in sequence.

Next Monday is the last day of the throne speech debate, and next Tuesday is the budget, according to the information we have at the moment. What would the committee like to do with regard to scheduling on those days? What is your feeling on that, and also on the way in which we are going to proceed with the bill itself? I will open it up now to any committee discussion you wish to have.

Mr. D. R. Cooke: The only problem is Tuesday next week.

Mr. Chairman: Monday is also a problem, in recognition of the fact that some members like to be there for the windup of the throne speech. That is entirely up to the members of the committee. There is no point in scheduling it if you do not want to be here, if we are all running around and if we have limited attendance. It would probably be in our best interests to cancel if there is a strong feeling that you want to be in the House.

Ms. Gigantes: There will be a vote, will there not?

Mr. Chairman: Yes. That will be disruptive in any event.

Ms. Gigantes: It seems to me that surely we could live without being in the House for the windup. Is that heresy?

Mr. Chairman: I am throwing it open for the committee's consideration and bringing the complication to your attention. I am not taking a position on it.

Ms. Gigantes: We have to be there if there is a vote, but before that we do not have to be there.

Interjection.

Mr. Chairman: It will not bother me.

Ms. Gigantes: Will the House be meeting on Tuesday at 2 p.m., or will it not meet until 4 p.m.?

Mr. Chairman: Unless there are changes I am unaware of, the normal procedure is to have question period in the normal fashion and the budget will follow at approximately 4 p.m.

We are dealing with procedural questions.

Hon. Mr. Scott: My congratulations on your election as chairman.

Mr. Chairman: Thank you, sir. It was a tough election.

Hon. Mr. Scott: What a great surprise.

Mr. O'Connor: Congratulations on changing cabinet.

Hon. Mr. Scott: That was a surprise too.

Mr. O'Connor: It was about as much a foregone conclusion as his re-election.

With regard to next week, in view of the information that you and the clerk have just given us, I would suggest that we agree to meet Monday after routine proceedings until 6 p.m.--the vote being at 6:15, I believe--and that we cancel Tuesday's meeting in the light of the budget speech that is to be delivered that day.

Mr. Chairman: Is that acceptable? All right. On Monday we meet until six and break at six so we can attend the vote at 6:15 p.m., after which we will cancel Tuesday. Our next meeting will be Tuesday, May 20.

With regard to Tuesday, May 20, since we have to give some preliminary notice with respect to this problem, would the committee agree that we invite the Ministry of Health here on Monday, May 20? This will help to schedule the various people who have to be here before us. Is that acceptable?

Ms. Gigantes: You said Monday.

Mr. Chairman: Did I say Monday? I meant May 20. I keep saying Monday.

Ms. Gigantes: May 20. Great.

Mr. Chairman: Is that acceptable? All right, we have that part behind us and we know how we will proceed. Anything further?

Hon. Mr. Scott: When we come to the order of business today, may I be heard?

Mr. Chairman: Yes. We are finishing up procedural matters. I do not believe there is anything else, unless the committee members have something else to bring to the attention of the chair.

Ms. Gigantes: I have one other question. It may be that I am just dumb. I am sure you will bear with me if that is the case.

When we look at the amendments, which have been ordered so neatly for us by the clerk, how do we deal with all those that come under section 17a, for example? What order do we place them in? Do we take them in order within the code?

Mr. Chairman: Yes. They are then in the same order as in the package.

Ms. Gigantes: Mr. O'Connor's motion on section 17a comes at the back. Am I right?

Mr. Chairman: Yes. His is the last amendment in that section.

Mr. Polsinelli: One further residual matter, since I am still a rookie member.

Mr. Chairman: We know.

Mr. Polsinelli: I know you know.

Mr. Chairman: We will be as helpful as we can.

Mr. Polsinelli: In one of the other committees I was in, I was led to understand that the procedure was that government amendments are taken first. Is that not the case?

Clerk of the Committee: To be considered clause-by-clause in order of the bill and the sections.

Mr. Polsinelli: Yes, but what if there are two amendments dealing with a specific section of the bill, one being a government amendment and the other not?

Clerk of the Committee: If there is an amendment by another party to amend the government motion, we vote on the amending motion first and then on the government motion, as it may or may not be amended.

Mr. Polsinelli: If there is a government motion on one particular section--

Mr. Chairman: It would be placed first.

Mr. Polsinelli: That would be placed first?

Mr. Chairman: Yes. It would be amended, and then we would go in reverse order.

Mr. Polsinelli: If that is amended, then we vote on the amendment to the amendment first.

Mr. Chairman: Yes, that is right.

Mr. Polsinelli: I understand that part.

Mr. O'Connor: Might I just advise at this point that when we come to the series of amendments dealing with the Human Rights Code, I will be asking the forbearance of the committee to forego dealing with those amendments until at least until tomorrow, for two reasons.

First, I require some additional instruction from our caucus with regard to some of them.

Second, there is one amendment, particularly mine, in which one of our members has a considerable interest, and she wished the opportunity to make remarks to the committee when we deal with it. She did not consider that it would be heard today--nor did I, as a matter of fact. I advised her it likely would not be reached today, but I see it is second or third in our package.

It is possible we might reach the Ontario Human Rights Code amendments today, and in that case I would ask that it be passed over until tomorrow and that we go on with some of the other work. I note that we have considerable work ahead of us.

Mr. Chairman: I think that request can be accommodated. The Attorney General may wish to make some response to your points.

Hon. Mr. Scott: This is an unusual bill because, although I present it because it has to do with section 15 of the Charter of Rights and Freedoms, as you will see, most of the acts that are amended are not acts within the general authority of my ministry but are acts that are within the authority of other ministers.

In some cases the ministers, with your permission, would like to be present when the act of which they are the custodian is being discussed by the committee. That is particularly true of the Human Rights Code amendments and of the employment standards code amendments.

I will look at it as my responsibility--because it should not concern you; it should not be a burden to you or the staff--to see that the minister is here when those amendments come up or that he will forever thereafter hold his peace. That is point one. There will be a scheduling problem, but I think I will be able to solve it for you.

The second difficulty, as Mr. O'Connor has noted, is that not every caucus has canvassed all the proposed amendments. Mr. O'Connor is right, altogether apart from dealing with Ms. Fish's concerns, that if the contentious material, if such there be, were postponed until tomorrow afternoon, we would be in a better position to proceed with it.

My proposal today, by way of giving us a little experience and an easier start, perhaps, is to take the bundle of amendments that deal with British subjects. I can give you the section numbers right off. They all deal with the same principle; they all present the same issue. While it is a little out of order, we would be able to approach a group in some logical order.

It seems to me that if you take them in the order in which they appear in the bill, you would be forced to look at the Law Society Act first and you would not look at the Municipal Act until much further down. Because they all raise the same kind of issue, it might be easier to cluster those and start off with them. If that is acceptable, I could give the committee the numbers of the sections that have to do with citizenship.

Mr. Chairman: That may create some complications because of the way the clerk has the bill already indexed and identified to simplify matters for the committee members. I do not know that it is an impossible matter to overcome, but it is the wish of the committee.

Hon. Mr. Scott: If we take them in numerical order, we are going to have trouble getting the ministers here. For example, section 2a is the New Democratic Party amendment to the Building Code Act, and the Minister of Housing (Mr. Curling) may want to be here. I can get him here on three minutes' notice, but if I know it is coming up tomorrow, for example, I will see, if he is here, whether he wants to be here.

I point out that all this would be completely unnecessary under majority government.

Mr. O'Connor: Okay, we will take over.

Mr. Chairman: What is your thinking?

Hon. Mr. Scott: Sections 24, 35, 53, 54b, 57 and 58a all deal with the British subject question. It seems to me that if we ran through them and passed them, amended them or whatever, we would have passed all the citizenship qualification sections of the bill.

Mr. O'Connor: Those numbers you read deal with age, do they not? Section 24 does.

4:10 p.m.

Hon. Mr. Scott: The government amendment added to it brings it into the citizenship question.

Those are all citizenship questions, and it seems to me there is a certain virtue to considering them together. If you make a decision on one, you will want, if consistency is a motive, to consider the implications of one as against the other.

Mr. Chairman: We can accommodate what the Attorney General is saying. We would effectively be clustering some of the aspects of the bill, and there could be some appreciable advantage in doing them in a logical sequence rather than just in a chronological sequence.

From the standpoint of the chair, I do not have a problem with that. If members of the committee agree to proceeding that way, I will try to proceed as chronologically as is humanly possible and then cluster according to the requirements of the respective ministries to be in attendance at the time their areas are being discussed.

I have to say in advance that I am worried about the whole issue becoming somewhat unravelled when you jump around too much.

Hon. Mr. Scott: I hope that after tomorrow, with one further exception that I would not dare try on you today but will try on you tomorrow, there will be no difficulty. If the minister is not here, that is not your fault or the committee's fault; that will be my responsibility. I would not ask the committee to await the minister unless it was absolutely critical.

Mr. Chairman: Are you thinking of Monday, May 12?

Hon. Mr. Scott: No. I am thinking that tomorrow we will be able to proceed and go through--

Clerk of the Committee: What about section 17a?

Hon. Mr. Scott: We can deal with section 17a right now if you want, or tomorrow. It is concrete and, Lord knows, it is all fresh in our minds.

Mr. Chairman: Is section 17a a problem for you, Mr. O'Connor?

Mr. O'Connor: Section 17a is the Human Rights Code? Yes, that is a problem. The person to whom I referred--although the Attorney General referred to Ms. Fish, it was not Ms. Fish--was Mrs. Marland on that particular point.

Hon. Mr. Scott: All right. Perhaps it can stand down until the Human Rights Code amendments come up.

Mr. O'Connor: If we could deal with it during the Human Rights Code amendments, I would appreciate it.

Mr. Chairman: For the information of the committee, until we get to subsection 13(2), we do not have any amendments.

Hon. Mr. Scott: That is not entirely true. There is a Building Code Act amendment, if I am right, from the New Democratic Party that will be section 2a.

Mr. Chairman: Has that been tabled? When was it tabled? I do not have it yet.

Ms. Gigantes: You do not have it? It was tabled months ago.

Hon. Mr. Scott: I have received it; the committee may not have. May I suggest that if we could do the age and citizenship ones today, we can then begin tomorrow going through it in order and make sure everybody has copies of everything.

Mr. Chairman: What section?

Hon. Mr. Scott: The first is section 24. I can tell the committee that the ones that deal with citizenship, if we are going to deal with them as a bundle, are sections 24, 35, 53, 54b, 57 and 58a.

Mr. D. R. Cooke: I have heard this debate for a while. I move that we start by dealing with section 24 and move on in the order the minister has suggested, and that when we get to the end of that line, we talk about what we will do next.

Mr. Chairman: If that is acceptable to the members of the committee, in the interim I will get the copies of the amendment being proposed by the NDP with respect to section 2a.

Ms. Gigantes: I have copies here.

Mr. Chairman: Ms. Gigantes, you may not have heard all of what the Attorney General said, but he would like to start with the bundle starting at section 24. If that is agreeable, then we will jump to section 24. I have all-party agreement, so we do not need a vote on a procedural matter such as this. On page 11 in your book, the government has an amendment to section 24.

Mr. D. R. Cooke moves that section 24 of the bill be deleted and the following substituted therefor:

"24(1) Subsection 14(2) of the Law Society Act, being chapter 233 of the Revised Statutes of Ontario, 1980, is repealed.

"(2) Clause 28(b) of the said act is amended by striking out 'or other British subjects' in the first and second lines.

"(3) Clause 28(c) of the said act is amended by striking out 'or other British subjects' in the first and second lines.

"(4) Subsection 32(1) of the said act is amended by striking out 'or other British subject' in the second and third lines.

"(5) Subsection 32(2) of the said act is repealed and the following substituted therefor:

"(2) Any member who is not a Canadian citizen on the 1st day of July, 1989, ceases to be a member on that day.

"(3) Any person whose membership terminated under subsection 1 or 2 may, upon becoming a Canadian citizen, make application for re-admission as a member and convocation may re-admit the person.

"(6) Section 35 of the said act is amended by striking out 'age' in the fourth line."

Hon. Mr. Scott: Perhaps I can introduce this. The amendment falls into three categories. The first is subsection 1, relating to subsection 14(2) of the Law Society Act, which provides that ex officio benchers on attaining the age of 75 years can no longer vote in convocation or in a committee. In the judgement of our department this is in breach of section 15 of the Charter of Rights and Freedoms and should be repealed.

The second provisions are subsections 2 to 5 on the motion before you. The Law Society Act now requires members of the Law Society of Upper Canada to be Canadian citizens or British subjects. The scope of this legislation is designed to take British subject out wherever it appears. That is the effect of subsections 2 to 5. Commencement of these provisions is postponed to July 1, 1989, to give noncitizen members, all of whom are Canadian residents and many of whom have British subject status from the United Kingdom or elsewhere, the opportunity to turn up at their neighbourhood citizenship court and become Canadian citizens.

Subsection 6 is an age provision.

If it helps, this has the acquiescence of the Law Society of Upper Canada.

Mr. Chairman: You have consulted with them.

Hon. Mr. Scott: Yes.

Mr. O'Connor: I have a comment. The Attorney General said that many of those affected by this category and who seek Canadian citizenship by 1989 will be British subjects. I suggest all of them would have to be British subjects or they would not be members of the law society now. Where does it stand with regard to most of the provinces? Have they passed similar enactments? Has there been litigation challenging the section with the British subject classification in it because it is contrary to section 15?

Hon. Mr. Scott: I cannot give you an exact answer. I believe the present British Columbia government has made this change. The other provinces are not as advanced with their equal rights bills as British Columbia and Ontario. I do not know what to say about them. I can find out if you want to know, Mr. O'Connor.

4:20 p.m.

Mr. O'Connor: It is not necessary.

Mr. Chairman: Is there any further comment on this section?

Ms. Gigantes: It will probably affect about three people in Ontario.

Hon. Mr. Scott: I think not. I think it will affect a large number of members of the bar who are British subjects because they were born in the United Kingdom or in what is now called the extended Commonwealth. They are from India, Pakistan, the Caribbean and so on. They came to Canada, went to law school and became residents. Until now, if they wished to practise as lawyers they did not have to change their status. One of the problems that concerned the Law Society of Upper Canada was to allow them a reasonable period in which to do so. That is why the 1989 provision is there as a transitional provision.

Mr. Chairman: Shall section 24 of the bill, as amended, carry?

Section 24, as amended, agreed to.

Mr. Chairman: There is a quorum call. Why do we not have one member from each party go to make it even, fair and equitable? We will continue on. They can come right back if there are--

Mr. Polsinelli: Do they let it run for a few minutes? Is a quorum recognized when the bell ceases?

Mr. Chairman: They have to recognize that there are 20 members there.

Mr. Polsinelli: It may not run for the full five minutes.

On section 35:

Mr. Chairman: Do you want to introduce this before we place the amendment?

Hon. Mr. Scott: No, perhaps the amendment might be placed.

Mr. Chairman: Mr. Cooke, are you placing all these?

Mr. D. R. Cooke moves that section 35 of the bill be amended by adding thereto the following subsections:

"(1a) Subsection 10(8) of the said act is repealed and the following substituted therefor:

"(8) No person is qualified to be an applicant under this section unless the person is a Canadian citizen and of the full age of 18 years.

"(1b) Subsection 14(2) of the said act, as re-enacted by Statutes of Ontario, 1981, chapter 70, subsection 23(3), is amended by striking out 'British subjects' in the fifth line and inserting in lieu thereof 'Canadian citizens.'"

Hon. Mr. Scott: This amendment, together with the section that is before you in the printed copy, deals with three slightly different things under the Municipal Act: age, marital status and citizenship.

With respect to age and marital status, I will make the following general observations. As we go through this, you will see many amendments that relate to age. Indeed, under the Municipal Act, we are removing a reference to old age in section 1 as being a discriminatory description within the meaning of section 15.

With respect to marital status, the Municipal Act has references to "widow," for example. That is obviously a breach of section 15 because it makes a right available to a widow only that is not available to a spouse. The first amendment is to remove "old age;" the second is to remove "widow" and put in "surviving spouse" and "spouse" where it appears.

The third, the citizenship amendment, relates to the following consideration: The Municipal Act concerns applications for the incorporation of improvement districts, townships, villages and towns, and for annexations. In each case, the Municipal Act requires that the applicant be a British subject. The amendment would require that the applicant be a Canadian citizen. It is not thought any transitional time is required in that respect.

Mr. Chairman: Is there any comment from members of the committee?

Ms. Gigantes: This means that in section 35 of Bill 7, we add two further sections after the printed amendment. Is that correct?

Hon. Mr. Scott: That is correct.

Motion agreed to.

Section 35, as amended, agreed to.

On section 53:

Mr. Chairman: Mr. D. R. Cooke moves that section 53 of the bill be deleted and the following substituted therefor:

"53(1) Section 1 of the Public Officers Act, being chapter 415 of the Revised Statutes of Ontario, 1980, is amended by striking out 'British subject

by birth or naturalization' and inserting in lieu thereof 'Canadian citizen or permanent resident of Canada.'

"(2) Section 4 of the said act is amended by inserting after 'swear' in the sixth line '(or solemnly affirm)' and by inserting after 'God' in the ninth line '(omit this phrase in an affirmation).'"

Hon. Mr. Scott: While the motion may remove the section that is there, it replaces it, as you will see, in expanded form. The existing part is to insert the right to affirm after the word "God." You will see that we run into this from time to time in the bill. I do not think there is anything contentious about this. You can swear an oath if you want, but now you can also affirm.

The other part of the amendment relates to the fact that a person employed in a public office in Ontario is, by law, now required to be a British subject. We simply replace that with "Canadian citizen or permanent resident of Canada." You may ask why we deviate here. It is as a result of the simple observation that there are people who are not Canadian citizens and to whom citizenship has not been granted by the Secretary of State. In our respectful view, they are people who should not be precluded from being employed in a public office in Ontario.

Mr. Polsinelli: What constitutes a public office?

Hon. Mr. Scott: My advice is "God knows," or in the alternative, "affirm," I guess.

Mr. Warner: What is a permanent resident?

Hon. Mr. Scott: "Permanent resident" is a way of accurately describing a person frequently referred to as a landed immigrant under the federal Immigration Act. As you may know, Mr. Warner, there are many people who come here and are landed and therefore cannot be ejected from the country. They have all the advantages of citizenship except citizenship itself, which is a benefit conferred in certain circumstances by the government of Canada. This means they cannot get passports but they have every right to remain, just as Canadian citizens do. It was felt that if they have that right, they should be entitled to hold a public office in Ontario.

Mr. Warner: Does the "permanent resident" category include more people than the "landed immigrant" category?

4:30 p.m.

Hon. Mr. Scott: It is really the same thing. It is defined in the Immigration Act as follows: "'Permanent resident' means a person who (a) has been granted landing, (b) has not become a Canadian citizen, and (c) has not ceased to be a permanent resident pursuant to subsection 24(1)."

Subsection 24(1), as I recall, relates to certain circumstances in which you may lose your landing rights, which have to do with leaving the country, remaining outside Canada for a period of time, or having a deportation order made against you. I would not want you to think that a deportation order can be made against every landed immigrant, because there are time constraints. After a certain point it is not possible to make a deportation order.

Mr. Warner: Thank you very much for the explanation.

Mr. D. R. Cooke: I was wondering what the present practice is with regard to people who have wished to affirm? What has been happening recently?

Hon. Mr. Scott: There is a case in which counsel for the applicant was one Scott, which arises out of a federal citizenship requirement. It is called Regina vs. Bergsma and was decided about 15 years ago. The Citizenship Act at that time required that after your citizenship examination you were to take an oath of loyalty to the Queen that had the phrase "so help me God" at the end of it. Mr. and Mrs. Bergsma, who were Dutch immigrants to Canada, declined to say "so help me God" for religious reasons and were prevented from becoming Canadian citizens.

The Court of Appeal for Ontario decided that this was wrong and let them become Canadian citizens, but did not amend the act. What we are engaged in now is a kind of housekeeping exercise. I think the law is clear that wherever an oath "so help me God" is required, a court would not compel the "so help me God" provision. We are really tidying up the statutes to see that this very sensible decision is made clear in every case where it appears.

Mr. O'Connor: Going back to the original point, why do we not use the term "landed immigrant status," which implies someone who has taken the conscious decision to make an application and thereafter to be granted the status? It is narrower and more restrictive than "permanent resident." It is not subject to, as in the case of "permanent resident," deportation order or deportation status.

Hon. Mr. Scott: If you look at the Immigration Act, there is no such thing as landed immigrant status. There is permanent resident status for a person who has been granted landing, has not become a Canadian citizen and has not been deported. If you are looking for a phrase in the Immigration Act that will clearly define who you mean, the phrase is not "landed immigrant." That is a short form used to describe it by those who are familiar with the act. The phrase in the statute is "permanent resident."

Mr. Polsinelli: I do not ask this question facetiously, but what is a public office in Ontario?

Hon. Mr. Scott: I think I can find out the answer to that but I do not know it at the moment. I think, off the top of my head, that the registrar of a court had a public office in Ontario, although that public office is appointed by the provincial government. I think the clerk of a municipality has a public office in Ontario. That clerk is, of course, appointed by the municipal government.

Mr. Polsinelli: For example, does it cover civil servants?

Hon. Mr. Scott: No, it is not an employment status. There is a distinction, as I understand it, between a public servant who is under the direction of somebody, who is purely a servant, and an office holder who has statutory responsibilities that he or she must perform without any direction from an employer.

The clerk of a court, for example, in returning the assessment rolls, if they still do that, or in certifying the municipal voters' list, is not a servant in the sense that he does not respond to the direction of the

municipal council. He has a statutory obligation that he performs without direction. That is the nature of an office holder.

Mr. Chairman: There being no further questions--

Hon. Mr. Scott: I cannot think of any except the clerk.

Motion agreed to.

Section 53, as amended, agreed to.

On section 54b:

Mr. Chairman: Mr. D. R. Cooke moves that the bill be amended by adding thereto the following section:

"54b. Subsection 16(5) of the Railways Act, being chapter 331 of the Revised Statutes of Ontario, 1950, is repealed."

Hon. Mr. Scott: As a matter of record, I am simply reading notes you all have. I suppose I had better do it for the record.

The present act requires that the majority of the directors of a railway company which is in receipt of aid towards its construction from the government of Ontario or the Legislature must be British subjects. Why that was there is not clear to me but it was. We ask that it be repealed. It is a discriminatory provision.

Mr. Warner: I want to make sure I have this straight. You are suggesting that the whole section be repealed; you are not suggesting that "British subject" be taken out and "Canadian citizen" be put in its place?

Hon. Mr. Scott: Let me explain what we have been doing. Whenever the computer pops up the words "British subject" or any other discriminatory characteristic, we look for an appropriate replacement. You will see, for example, that in the case of the Law Society Act we inserted "Canadian citizen." In the case of an office holder under the Municipal Act we inserted "Canadian citizen or permanent resident." In this case, we assert that the section be repealed and no qualification be required.

Each of those different responses is the response of the persons responsible for the administration of the act to what is appropriate. Let me take them backwards and show you how we have reacted. The present section of the Railways Act is clearly in breach of section 15, so we have to deal with it. The question becomes whether we should make it "Canadian citizen" or "permanent resident" or leave it up to the Legislature, when it grants aid to a railway, to either impose a requirement of its own or say there is none.

We thought if the Legislature is going to aid a railway, it presumably is going to do so because it is interested that there should be more track across Ontario. It is not going to be interested in the citizenship of the directors. Citizenship is not relevant to that kind of exercise any more than it is relevant to a grant to the children's aid society to find out how many of its directors are British subjects, Canadians or permanent residents. It is an irrelevant consideration.

When it comes to the Municipal Act, because the work is directly answerable to the public, it was thought that there should be a permanent

connection with the country and that a municipality should not be able to grant an office to an American citizen resident in the US. That is why we suggested the words "permanent resident" there.

With respect to the Law Society, our original proposal was to assert that a Canadian citizen or permanent resident should be entitled to be called to the bar. The practical difficulty with that is that before you can have audience in the court, it is necessary to take an oath of fealty to Her Majesty the Queen.

Permanent residents are not able to do that. If they do, it is assumed because they have not obtained the advantage of citizenship, that the oath may be meaningless to them. If William Joyce, Lord Haw-Haw, for example, had taken an oath of fealty to the Queen in 1939, it would have been a meaningless oath because he was not a British subject, but an American citizen. It did not prevent him from being hung, or do I mean hanged?

Mr. Chairman: Mr. Polsinelli on a supplementary and then back to Mr. Warner.

4:40 p.m.

Mr. Polsinelli: I understood from my studies that under British common law, once an oath of allegiance to Her Majesty is taken, then the person does become a British subject. That is just an aside.

Mr. Chairman: It is an intriguing supplementary. Back to Mr. Warner.

Mr. Warner: Under your suggestion, if a one-resource town in northern Ontario where the major resource is owned, operated and controlled by a non-Canadian, often an American, company and the transportation in and out of that mining community is by rail, it is possible for the Americans also to control the operation of that railway to this town which may or may not have a highway.

Hon. Mr. Scott: At the moment you are right. Directors of a railway or any other kind of Ontario company are not required to have any particular citizenship. That has always been so.

Mr. Warner: You had to be British.

Hon. Mr. Scott: No. Only if you received aid from the government of Ontario did you have to have citizenship.

Your next question will be, why did you have that requirement? Sir Oliver Mowat may have known but I do not. I cannot see any purpose for it.

Mr. Warner: He did not write it down.

Mr. Chairman: This is a new section, so all that is required is to pass the amendment adding the section.

Mr. Polsinelli: Can we not also deal with subsections 54(1) and (2)?

Hon. Mr. Scott: We are not quite ready with that. Can we deal with that later?

Mr. Polsinelli: Maybe I should keep quiet.

Section 54b agreed to.

On section 57:

Mr. Chairman: Mr. D. R. Cooke moves that section 57 of the bill be amended by adding thereto the following subsections:

"(1a) Subsection 16(2) of the said act is repealed and the following substituted therefor:

"(2) Every person is entitled to vote in the election of the road commissioners who is of the full age of eighteen years and a landholder in the township or townships, or part or parts thereof, or the locality, for which the election is held.

"(1b) Subsection 16(3) of the said act is repealed.

"(1c) Section 17 of the said act is amended by striking out 'a British subject and otherwise,' in the second line.

"(1d) Subsection 19(1) of the said act is amended by striking out 'that you are a British subject' in the fourth and fifth lines of the oath.

"(1e) Subsection 19(2) of the said act is repealed."

Hon. Mr. Scott: Statute labour is traditionally the right of a municipality to require men within the municipality to perform labour in the interests of the municipality. That is how a lot of roads in the province within municipalities were originally built.

The provision for statute labour applies only when a township or municipality has not abandoned its entitlement. The present regulations have an age restriction and a sex restriction. Let it never be said we are moved only by feminism. We are going to be equal here. This imposes statute labour on all people, male or female, and removes the upper age limit, which does not permit statute labour to be worked by persons over 60. They may be just as qualified under an equal view of the law as people under 60.

Ms. Gigantes: What is the application of this section of the Statute Labour Act in Ontario today? Is it for people actually building roads?

Hon. Mr. Scott: There are probably not many municipalities exacting statute labour from their folk, but it is an intriguing idea to think you can do it.

Ms. Gigantes: Why do we have this law at all any more?

Hon. Mr. Scott: Because the repeal of this act was not a feature of the accord.

Mr. Warner: This cost-cutting measure is going to be in the budget.

Ms. Gigantes: Nobody has ever heard of it.

Hon. Mr. Scott: It is not an initiative upon which my party campaigned in the last election. Also, we do not know whether there may be municipalities that are utilizing it or may want to utilize it. It is thought no harm will be done by simply leaving the statute there to be utilized by

municipalities if they wish, but at the same time removing the discriminatory features of it.

Mr. Chairman: It sounds surprisingly like a workfare program of some kind.

Mr. Warner: Yes. Cutting the highways budget in half.

Mr. Partington: Is it not extending an option to the taxpayer? Instead of compelling somebody to do it, you give him the option of working, and therefore, it is beneficial wherever it is introduced. It lets somebody who does not otherwise have the money work off the debt, which is reasonable.

Hon. Mr. Scott: I think you are right, Mr. Partington, but I am not certain. You certainly sound sensible.

Ms. Gigantes: Does this have a counterpart in legislation that would allow the rounding up of able-bodied people, for example, in case of a forest fire?

Hon. Mr. Scott: It does, yes. You will be thrilled to hear that there is a special provision in the Forest Fires Prevention Act to which we will be coming later.

Ms. Gigantes: Good. I am relieved, because I have heard of that. It is nice to know this is going to be in order, even if it is irrelevant.

Mr. Chairman: Shall the section, as amended, carry? Carried.

Section 57, as amended, agreed to.

Hon. Mr. Scott: So far, everybody will have at least a note or two for their householders.

On section 58a:

Mr. Chairman: Mr. D. R. Cooke moves that the bill be amended by adding thereto the following section:

"58a. Subsection 6(7) of the Surveyors Act, being chapter 492 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

"(7) No person shall be appointed or elected as a member of the council unless the person is a Canadian citizen or a permanent resident of Canada and a person shall cease to be a member of the council if he or she ceases to be so qualified."

Hon. Mr. Scott: This simply removes the British subject requirement and extends the right to be a member of the council of the surveyors to Canadian citizens or permanent residents.

Ms. Gigantes: They are being treated like lawyers.

Hon. Mr. Scott: No. They are being treated either worse or better than lawyers, depending on what you think of it.

Ms. Gigantes: Yes, that is right. They are.

Hon. Mr. Scott: That is because surveyors do not have to take an oath of fealty, as I understand it.

Mr. Warner: It is just to serve on the council.

Mr. Chairman: Shall the amendment carry? Carried.

Section 58a agreed to.

Hon. Mr. Scott: Now we can either do a bundle of noncontroversial amendments, which I have asterisked, or we can begin at section 1 and work through, leaving out the Building Code Act for the minute. That would at least take us down to the Crown Timber Act before we got into contentious stuff. Which would you rather do?

4:50 p.m.

Mr. Chairman: Do you want to do the noncontentious ones first?

Hon. Mr. Scott: Let me do those.

Mr. Chairman: What is the wish of the committee? Do you wish to go back to section 1 and proceed through, or do you wish to do the bundle of noncontentious ones the Attorney General has flagged?

Ms. Gigantes: Let us do the noncontentious ones.

Mr. Chairman: He thinks they are noncontentious.

Hon. Mr. Scott: I think they are noncontentious. Actually, the first is sort of fun.

Mr. Chairman: Let us deal with that.

Hon. Mr. Scott: I propose that we deal with sections 13, 15, 38, 54c, 55 and 58c, all of which have been approved by the ministries involved and are relatively simple.

On section 13:

Mr. Chairman: Mr. D. R. Cooke moves that subsection 13(2) of the bill be deleted.

Hon. Mr. Scott: This applies to the Election Act. The problem presented here is that in a number of these acts we are trying to find a common age of majority. Obviously, there is going to be some kind of age discrimination. Five-year-olds cannot be expected to exercise rights that are appropriate for adults. The age of majority is 18, and we have proposed that 18 be the normal age of majority in statutes where a minimum age is obviously required.

You should understand that when we insert an age in a statute, there may be an attack, based on the Charter of Rights, by someone who is under that age. There has to be a rationalization advanced under section 1 as to why the age discrimination--whether 18, 16 or 15--is justifiable in a free and democratic society. The best rationalization available for something that in a sense is unrationalizable is to pick the age of majority.

Subsection 13(2) would have raised the age of scrutineers to 18 in the appropriate provision of the Election Act. The question is whether that will be a difficult onus in an election campaign. The case made to us is that a number of scrutineers are 16 or 17. They are members of political parties who are active in the electioneering process. They canvass and do other things, and we might make an exception in order to see to it that there is a full polling day operation in all constituencies for all the parties.

The Municipal Elections Act changed its provision in the fall. At present, in a municipal election, a scrutineer has to be 18. The question here is, do you favour consistency or do you favour--

Mr. Warner: It should not have been moved to 18.

Ms. Gigantes: We had a fight about that in the House. There are a lot of good reasons for saying 16. At 16, a child may leave home or school, take on all the responsibilities of debt and drive a car.

Hon. Mr. Scott: The practical problem we run into is that if we pick 16 for this act, we jeopardize the Municipal Elections Act. In other words, when a court looks at the age discrimination, there has to be some rationality. If we pick 16 in the provincial Election Act, we make the Municipal Elections Act susceptible to attack. The court will say, "If age 16 is good enough for provincial elections, why is it not good enough for municipal elections?"

Mr. Polsinelli: It is because municipal elections are more important.

Mr. D. R. Cooke: They are more complicated.

Interjection: What is the age for federal elections?

Hon. Mr. Scott: I do not know what the age for federal elections is. I understand that in the last campaign some very young people were active.

Mr. Warner: There were six-year-olds. The Tories were desperate.

Mr. Chairman: In what party?

Mr. Warner: I heard that some of them were even trying to be candidates.

I would opt for 16 years of age and suggest that you retrieve the municipal one because you are convoluting the statement.

Hon. Mr. Scott: May I suggest this? Forgive me for intruding this way. There is no justification for having two different ages. When you decide whether it is 16 or 18 with relation to the provincial Election Act, you may want to consider rolling in another amendment for the Municipal Elections Act. They will wonder what we are doing because it is only months since we changed it to 18.

Ms. Gigantes: That question is not going to arise until the next municipal election. I suppose there can be by-elections. There is going to be a major overhaul of the Municipal Elections Act anyhow, is there not?

Hon. Mr. Scott: I do not know.

Mr. Warner: But you can make change here. Is that what you are suggesting?

Hon. Mr. Scott: You are being asked to look at the Election Act here. If you wanted to look at the Municipal Elections Act, it would be in order to do so. I would draft up an amendment overnight if you wanted consistency. The only virtue of consistency is that you remove the susceptibility of the senior age to attack.

Mr. Warner: I like the idea of amending both.

Ms. Gigantes: Let us go with 16 years of age.

Mr. O'Connor: I would prefer the dichotomy to exist so that we can attack the government on not knowing what it is doing.

Hon. Mr. Scott: We will do what we can to provide suitable material for such an attack, Mr. O'Connor.

Mr. Warner: There will be lots of opportunities.

Mr. Poirier: Does the Attorney General know of other places in the statutes where there is such a difference in age?

Hon. Mr. Scott: As Ms. Gigantes will know, and I think we dealt with them under the Family Law Act and the Child Welfare Act, there are differences in age that have to do with adoption. There is an anomaly with respect to the fact that a child of seven is obliged to consent to his adoption. The ages of 16 and 18 are also used in that act. I do not ask you to deal with that now, because as you perhaps know, the legislation that is related to the release of information respecting adoptions is currently being reviewed by the government. When a determination is made about what to do, and if we decide to act, we will be able to bring forward a package of amendments that will correct, or at least address, that question.

Apart from that, I hope we have covered all of the anomalies. In no sense can I guarantee that we have.

Mr. Poirier: What is your personal feeling as to what age it should be--16 or 18?

Hon. Mr. Scott: Let me put the question this way. If we select 18 as the scrutineers' age and someone who is under 18 attacks that section in a court, the issue will be whether there is any rationalization for 18 or have you just picked a number out of the air? The answer will be that 18 is the age of majority and the serious responsibilities associated with counting ballots, and the interests of a political party, require majority status. Only an adult should be entrusted with that important--and it is important--responsibility. If there had been a better counter in 1981, I would have been here earlier. It is also the voting age. Therefore, 18 can be justified on those grounds.

5 p.m.

If you pick 16 years of age and an attack is made by a 15-year-old, it is probably difficult to point to any rationalization for 16. That does not mean that we will not try when an attack is made, but there is no logical or innerent justification for picking 16 rather than 17 or 15. That does not mean it will not be sustained. It simply means that it is prima facie age

discrimination, because you have made it impossible for people younger than 16 to act as scrutineers. It is difficult at the moment to think of a rationalization, except that you may say the age of 16 indicates a person is well on the way towards high school graduation and is developing a certain intellectual maturity.

Mr. Warner: We permit that person to obtain a driver's licence. We have conferred that responsibility upon the individual. The age jungle is fascinating. We have ages ranging from 12 in the Child Welfare Act to permitting school leaving at age 14, although it is usually supposed to be 16. Drinking is not permissible until 19. Voting is allowed at 18, as is entering legal contracts. We have a range of ages that pops up in all sorts of places.

Hon. Mr. Scott: Leaving home or parental control is allowed at age 16.

Mr. Warner: Purchasing of cigarettes is allowed at age 14. Curfew laws affect 14-year-olds.

Hon. Mr. Scott: By the end of this bill, we will have got rid of all the references to 14-year-olds. We have age 16 in respect of driving and we have ages 7, 12 and 16 in the Child Welfare Act.

Mr. Warner: What about curfews and smoking?

Hon. Mr. Scott: I think they are taken care of, or at least they are not statutes. They are bylaws.

Mr. Chairman: May I suggest we defeat the amendment to delete? If that is agreeable to the members of the committee, then a further motion of direction to the Attorney General in the interests of some uniformity between the Municipal Elections Act and the provincial Election Act would be in order. If we delete, then we have a built-in inconsistency between the two. However, if your interest is in trying to find some uniformity, then a motion to direct would follow the motion to defeat this deletion. That would hopefully clear up the anomaly between the two age categories.

Hon. Mr. Scott: If you pass it, you have an inconsistency.

Mr. Chairman: I said that the other way around.

Mr. Partington: I would like to follow that through and suggest we delete the amendment.

Mr. Chairman: All we have to do is take a vote to defeat it.

Mr. Polsinelli: I would prefer the other course, which would be to pass the amendment and give a direction to the Attorney General to bring an amendment forward with respect to the Municipal Elections Act. Why do things backwards?

Hon. Mr. Scott: I do not understand. Do we want the age to be 16 or 18?

Mr. Polsinelli: Sixteen.

Mr. O'Connor: No, 18.

Mr. Partington: Definitely 18.

Mr. Chairman: That makes a difference in how you may want to deal with the amendment.

Mr. Polsinelli: All of a sudden a noncontentious item has become a contentious one.

Mr. Chairman: We have a motion. If everyone is clear on how we would proceed in any event, depending on which age you want, we can deal with the amendment now. The effect of that would be to delete the section that has already been placed in.

Hon. Mr. Scott: If you carry the motion, the age will be 16.

Mr. Warner: Call the question.

Mr. Chairman: All in favour of the amendment? Opposed?

Motion agreed to.

Mr. Chairman: Is there a further direction to the Attorney General?

Ms. Gigantes: He made a commitment before that he would draft another one.

Mr. Chairman: Do you want to get it on the record?

Ms. Gigantes: It is on the record.

Hon. Mr. Scott: Is that the wish of the committee?

Ms. Gigantes: Sure.

Hon. Mr. Scott: If it is the wish of the committee, tomorrow or some other day may I bring in an amendment to make the Municipal Elections Act consistent?

Mr. Chairman: We will not require a motion then. Do you want to deal with all of section 13 now, as amended? We have dealt with subsection 2 only.

Mr. Polsinelli: If the Attorney General is bringing in another amendment to section 13 with respect to the Municipal Act, perhaps we should--

Mr. Chairman: Leave it open?

Mr. Polsinelli: --leave it open until he brings that amendment.

Mr. Chairman: Fine. We have only dealt with subsection 13(2). I do not want to cause confusion. My question before the committee is do you want to deal with all of section 13 now? There are no further amendments and if you wish to carry the balance of section 13, I will place that on the floor.

Section 13 agreed to.

On section 15:

Mr. D. R. Cooke: I move that section 15 be deleted.

Hon. Mr. Scott: The justification for this is that these changes in the Equality Rights Statute Law, like section 15, were all made in the Family Law Reform Act. You all remember that experience with excitement and pleasure last autumn. It is therefore unnecessary to do them again.

Mr. Warner: I do not wish to complicate things unduly, but normally the procedure is that, if the committee does not wish to support a particular section, it is called and voted against, rather than bring a motion.

Ms. Gigantes: Let us call it and vote against it.

Mr. Warner: That is what I mean. In other words, you just call the section, "Are you in favour of section 15, aye or nay?" That is normally the procedure.

Mr. D. R. Cooke: I will withdraw my motion.

Mr. Partington: I was going to say we all remember those deliberations last fall, including the undertaking delivered by the Attorney General, yet to be fulfilled, to take everyone out for dinner.

Hon. Mr. Scott: I have a number of other bills. If you would like to pick an evening when we could go to dinner as my guests, I would be very grateful. I trust you will bring an attendance list to make sure that the beneficiaries of a free meal have attended at least 75 per cent of the sittings of the committee.

Mr. Chairman: There are also members of the committee who may not be able to attend but would like to have cash in lieu of.

Mr. Polsinelli: May I suggest the arrangements be made before the next blue moon.

Hon. Mr. Scott: I would be delighted to do that at any convenient time.

Mr. Chairman: With the new sitting hours, we may have a better opportunity to take advantage of the Attorney General's kind offer in that respect.

Mr. O'Connor: Can we make that an amendment to this section?

Mr. Chairman: Are you ready for this section?

Section 15 negatived.

On section 38:

Hon. Mr. Scott: The next is section 38. This is also one which, to reflect the committee's view, I suggest we vote against. I will undertake to bring back an amendment to reduce the scrutineer's age to 16. We could ask the clerk to leave the number free and insert it tomorrow.

Mr. D. R. Cooke: Do you want to wait until tomorrow?

5:10 p.m.

Hon. Mr. Scott: No, it should be called now. If we leave the space, I will bring in a motion. I will have to refer it to the Minister of Municipal Affairs (Mr. Grandmaître), but I do not anticipate that will take long.

Mr. D. R. Cooke: I ask that section 38 be called.

Mr. Warner: I just want to be clear on what we are voting. Are you suggesting that the entire section 38 be deleted?

Hon. Mr. Scott: The reason for that is that it was all done in the autumn in the Municipal Elections Act.

Mr. Warner: Was the reference to "Canadian citizen" included?

Hon. Mr. Scott: Yes.

Mr. Warner: Oh, it was.

Hon. Mr. Scott: This bill is older than a number of bills such as the Municipal Elections Act, and was introduced at about the same time as the Family Law Act. The changes were proposed in both acts. It is not necessary to pass them because they have already been passed.

Mr. Chairman: Can we clarify what we are going to do with section 38?

Hon. Mr. Scott: Sorry, Mr. Chairman.

Mr. D. R. Cooke: I called section 38 before.

Mr. Chairman: I am sorry. I did not hear that. Could you put that on the floor again?

Mr. D. R. Cooke: Certainly. I ask that section 38 of the bill be called.

Mr. Chairman: All those in favour? Opposed?

Section 38 negatived.

On section 54c:

Mr. Chairman: Mr. D. R. Cooke moves that the bill be amended by adding thereto the following section:

"54c(1) Clause 3(5)(c) of the Retail Business Holidays Act, being chapter 453 of the Revised Statutes of Ontario, 1980, is repealed.

"(2) Section 5 of the said act is repealed."

Hon. Mr. Scott: This should be considered with section 29 of the bill, and perhaps I can just explain what is intended. You will recall that in an Alberta case the Supreme Court of Canada struck down the Lord's Day Act, a federal enactment, on the grounds that it was in breach of the Charter of Rights.

The Lord's Day (Ontario) Act is, in effect, the kind of delegated legislation which depends for its authority on the federal act. The federal act having disappeared, the provincial act is, in effect, a dead letter. It

nas no nost upon which to grow. It dealt, you will recall, with sports in municipalities and certain things such as that.

Section 29, to which you will be coming, repeals the Lord's Day (Ontario) Act. The section which is now before you removes a provision referring to the Lord's Day (Ontario) Act in the Retail Business Holidays Act.

Mr. O'Connor: Can clause 3(5)(c) and section 5 be read to us? Do we have them here?

Hon. Mr. Scott: I am sorry; we do not.

Ms. Gigantes: How does this relate to section 54 of the bill?

Hon. Mr. Scott: I do not think it does.

Ms. Gigantes: Then why are we throwing it in here? Section 54 deals with the Public Service Act.

Hon. Mr. Scott: The numbers that have been selected for these amendments are selected in an effort to deal with the acts in alphabetical order. The Retail Business Holidays Act comes between the Public Service Act and the Securities Act. Therefore, when the process is complete, the sections will be renumbered, but we would now like to maintain alphabetical order.

Mr. Warner: I am really not ready to proceed with this because I would like to know precisely what it is that I am removing. The Retail Business Holidays Act is an act which has received some public attention and interest, and I would like to know precisely what portion of it I am about to remove. If we are doing that, I would very much appreciate some idea as to what it is.

Hon. Mr. Scott: I have no objection to it being put down, but as the foundation for the Lord's Day (Ontario) Act has disappeared by court order, it hardly matters what it says. It is not the law now.

Mr. Warner: It depends on what else is in that section. The Retail Business Holidays Act makes reference to things other than the Lord's Day (Ontario) Act. There is more to the act than that. It determines holidays which are not in the federal statute, such as Boxing Day. It designates classes of stores which are exempt. It designates tourist areas, etc. Before I go willingly removing anything on good faith, notwithstanding the always good intentions of the Attorney General, I would like to see in print what it is I am being asked to remove.

Mr. Chairman: We can stand it down, if you would like.

Mr. Callahan: Might I suggest that we get a couple of Revised Statutes of Ontario in here? Rather than standing them down, we could deal with them. The explanation down below, to me, simply says that because it refers to the Lord's Day (Ontario) Act, which no longer exists, it is being repealed. If you have some concerns, perhaps we should get the statutes in here.

Mr. Warner: I know what it says.

Mr. O'Connor: I want to support what Mr. Warner said. I had something to do with the act recently. As I recall, section 5 is a fairly

substantive section of that act. I am concerned that simply by deleting any reference to the Lord's Day (Ontario) Act and substituting therefore perhaps some other words, we may be able to get by without repealing the whole section in the act by simply amending it.

Hon. Mr. Scott: I suggest you stand it down, Mr. Chairman.

Mr. Chairman: All right. We will postpone it by agreement of committee and deal with it tomorrow.

On section 55:

Mr. Chairman: Mr. D. R. Cooke moves that: "Clause (c) of subparagraph (ii) of paragraph 21 of subsection 34(1) of the Securities Act, as set out in subsection 55(3) of the bill, be amended by striking out 'issuer' and inserting in lieu thereof 'person mentioned in clause (b)';

"That clause (d) of the said subparagraph (ii), as set out in subsection 55(3) of the bill, be amended by striking out 'issuer' in the first line and inserting in lieu thereof 'person mentioned in clause (b)' and by striking out 'issuer' in the second line and inserting in lieu thereof 'person';

"That sub-subclause (C) of the said act, as set out in subsection 55(5) of the bill, be amended by striking out 'issuer' in the second line and inserting in lieu thereof 'person mentioned in sub-subclause (B)';" and

"That sub-subclause (D) of the said act, as set out in subsection 55(5) of the bill, be amended by striking out 'issuer' in the second line and inserting in lieu thereof 'person mentioned in sub-subclause (B)' and by striking out 'issuer' in the third line and inserting in lieu thereof 'person'."

Hon. Mr. Scott: You may want to stand this down but let me tell you what it deals with. It deals with the issuer of securities and imposes certain restrictions on the spouse of the issuer of securities. The issuer of securities may be a person but the issuer of the securities may also be a limited company. The technical oversight in the Securities Act is that if the issuer is a person, there is no problem. If the issuer is a limited company, you want to take the restrictions to the issuer's directors or officers. That was the oversight. The Securities Act speaks only of issuer and overlooks the fact that the issuer may be a limited company.

Mr. Chairman: Is there any further comment? Does the amendment carry?

Motion agreed to.

Section 55, as amended, agreed to.

On section 58c:

5:20 p.m.

Mr. Chairman: Mr. D. R. Cooke moves that the bill be amended by adding thereto the following section:

"58c. Subclause 1(1)(xa)(ii) of the Workers' Compensation Act, being chapter 539 of the Revised Statutes of Ontario, as enacted by Statutes of Ontario, 1984, chapter 58, subsection 1(7), is repealed and the following

substituted therefor: (ii) not being married, had been living with each other immediately preceding the death in a conjugal relationship of at least one year's duration."

Hon. Mr. Scott: This reflects the kind of debate we had for the Family Law Act, in which we are going to grant rights beyond spouses, to those who live in a conjugal, common law relationship for at least a year, and allow the benefits of the Workers' Compensation Act to them.

Ms. Gigantes: I recollect that the family law rights conferred to members of a relationship where there is no child extend only to relationships of two years.

Hon. Mr. Scott: I think it is three years. Your motion was two.

Ms. Gigantes: That is why I remembered it that way. Here, would we grant benefits where there is a relationship of one year?

Hon. Mr. Scott: It may not appeal to you, but I think the reality is that we would like to give a benefit under the Workers' Compensation Act to the common law spouse, even if he or she has been so for only a month. In other words, there is no obligation imposed here on anybody; there is simply an entitlement which we would normally give to the spouse. If the spouse was a spouse by marriage, we would give it if the marriage occurred only a day before the accident. We would grant it to a common law spouse on the same basis.

In these cases, there is always an evidentiary problem. How do you show that the relationship is a real one and not one developed after the event in order to get a benefit? If you said "one day," you can see there would be an evidentiary problem. That is why one year is selected. Marriage is easy. There is no evidentiary problem because the certificate solves it; 20 minutes is good enough. In common law relationships, there is a difficulty because people may live together in a loose sense and not intend to enter into a common law relationship, and the courts will look to some evidence which shows a kind of permanence. We are not looking for a high standard here. We are simply looking for something that can be demonstrated that antedates the event.

Ms. Gigantes: What about a common law relationship where a contract has been signed?

Hon. Mr. Scott: Do you mean a property-division contract? This amendment would still require one year.

Ms. Gigantes: Then it may not be good enough.

Mr. Warner: Is there some reason why you put one year in this amendment, but not in what is just above it, clause 58(1)(a), which has almost the identical wording but says only, "living in a conjugal relationship?" It does not include the phrase "of at least one year's duration." I know it is a different act.

Hon. Mr. Scott: No. It is a fair question. The distinction you point out is that, in order to achieve entitlement, the spouse has to satisfy somebody. In the amendment you refer to under the Surrogate Courts Act, it is a court determination, so there will be a tribunal weighing the evidence. You can therefore appropriately remove a time limit and ask the court, "Were they living in a common law relationship?" The court can go to ground zero if it is

satisfied that the common law relationship, in good faith, began two days before the death. It becomes an evidentiary problem. The court can resolve that and we want it to have the maximum right to do so without any minimum time limit.

When you go to the Workers' Compensation Act, except where there is an appeal, you are not dealing with a quasi-judicial determination, but one made by a servant of the ministry or board who looks at the forms. In that case--

Mr. Warner: You need something.

Hon. Mr. Scott: --one year has been accepted as a matter that will present no doubt.

Mr. Warner: Thank you for the explanation.

Ms. Gigantes: I suggest we consider this amendment insufficient, because it does not cover the case in which people decide to live in a conjugal relationship and have clearly established that by means of a property division contract. I think it should take care of that.

Mr. Chairman: Is yours on the same point, Mr. Partington?

Mr. Partington: It is. What does the act now provide on this? How long do two people have to live together before there is an entitlement now?

Hon. Mr. Scott: The Family Law Act now requires three years or a child.

Mr. Partington: Why would this not be the same?

Hon. Mr. Scott: It is not desirable that it should be the same. As with the Surrogate Courts Act, in which an application is made where a person dies without a will, I presume we would agree that if the judge determines the testator or testatrix entered into a common law relationship shortly before his or her death, that person should have the right to benefit under the estate where there is no will even if the common law relationship only subsisted a month, just as he would if the marriage had subsisted only a month.

Mr. Partington: I was thinking of the Family Law Act. Society recognizes the commitment of a formal marriage, and has now gone so far as to recognize a common law relationship, albeit one that should be for three years. You would have the relationship for a week and then the--

5:30 p.m.

Hon. Mr. Scott: Let me put it this way. These amendments are an attempt to grant the same rights to a common law relationship you grant to a marital relationship. In other words, the scheme of the act is to give people who live common law the same rights as people who have a marriage certificate.

For example, under the Surrogate Courts Act or the Workers' Compensation Act, we give a spouse by a marriage certificate the right to recover either from the estate or the board fund even if they have been married only one or two days. We want to give to the common law spouse the same right. When a court decides whether the common law relationship exists, there is no problem, viz. the Surrogate Courts Act. Where there is an administrative scheme with no court or tribunal, there must be a form and the question is then whether you

nave complied if you show that the relationship has existed for a year. If you say you will have complied if the relationship exists for a day, then you make it very easy in the form to assert a common law relationship which cannot be tested.

Mr. Partington: There is a question you have not yet answered to my satisfaction. Society, it seems to me, has agreed that we respect a formal marriage, or a common law relationship having a duration of three years. This seems to say that one year is enough. If someone dies after having been married for two days, that is fine, because they made a formal commitment. The other formal commitment is that it be a common law marriage for three years.

Hon. Mr. Scott: No. What we are dealing with here is that the Human Rights Code purports to treat them equally. The Human Rights Code was passed by the previous government, God bless them. What we want to do is carry that theory forward into other legislation. I am not sure the Family Law Act has anything to do with it. It makes provision for when you can call upon a person for support.

Mr. Warner: I would like to add one word, if I could. In considering the Family Law Act, I do not believe you would have been of the view that a spouse would have the right to support after one day of a common law relationship.

Mr. Partington: I agree. I am arguing that it should be three years now. It seems to me that one year of two people living together is a casual relationship that does not deserve support under the act.

Hon. Mr. Scott: Let me put this proposition to you. Suppose a common law relationship was entered into last month and the husband--forgive me; I have to get these things straightened out--then died. Is it the intention of the committee that they would not want that common law spouse to benefit under the estate because the husband had not lived two and a half years longer?

Mr. Partington: That would be my intention, because it is not a legitimate common law relationship.

Hon. Mr. Scott: So you have a sort of free, three-year period, as long as you die before it is over. I would have thought exactly the opposite was true. If you entered into a common law relationship and you died without a will, even though the relationship had only been two or three months old, you would want your common law spouse to benefit just as if she were your wife.

Mr. Partington: It is not a recognized common law relationship, however, without the expiry of a certain length of time.

Hon. Mr. Scott: The expiry has been foreclosed by virtue of death. Are you going to assume it would terminate if it had continued, or are you going to assume it would have continued?

Mr. Partington: Hedge your bets by getting married. Absolutely.

Hon. Mr. Scott: Well, that is one view.

Mr. Warner: I appreciate the explanation provided by the Attorney General. I see the distinction between the requirements under the Workers' Compensation Act and what might happen in a court. I understand that. I agree that we ought to come up with some kind of time frame for the Workers'

Compensation Act. I do not believe that one year is unreasonable. However, I believe that my colleague raises a good point.

We recognize in law the contract between two people, where two people have entered into a contract with respect to property and so on. It seems to me that this is some evidence of a relationship stronger than the time frame of saying it must be a year, two years, three years or whatever. That contract is important.

I think it is possible then to amend this to say "of at least one year's duration or notwithstanding the contract," whatever the proper term is. It should reflect the idea of a contract between the two individuals. Otherwise, you could have this bizarre situation of two people in a common law relationship having drawn up a property agreement and at the end of six months, one of them unfortunately dies. In this case, the person died on the job in one of our unsafe mines or because of asbestosis or any of the other industrial diseases. Those two people who had entered into that agreement and then the spouse is left without compensation from the Workers' Compensation Act in the form of death benefits. To me, where they had already entered into a formal agreement, that is not fair.

Hon. Mr. Scott: Between Mr. Partington and myself, there is an issue of principle that can be resolved as the committee sees fit. If Mr. Partington is correct, it seems to me we have thereby committed ourselves to treating a spouse differently by virtue of her common law relationship. There is that issue which has to be decided.

With respect to Mr. Warner and Ms. Gigantes, I see the logic of what they say. If you are looking for evidence, the contract may be the best evidence. I am sympathetic to that.

I wonder whether I can ask the Minister of Labour (Mr. Wrye) about this. It is his legislation, and I do not want to get into any trouble by giving government concurrence to an amendment. I believe there is a representative from the ministry here who can take this section up with the minister. What is contemplated is that this section be amended by extending benefits under the act to a spouse who is party to a cohabitation or property division contract.

Mr. Chairman: Mr. O'Connor has the floor; then Ms. Gigantes and Mr. Polsinelli.

Mr. O'Connor: Perhaps more for the assistance of the representative from the ministry than anybody else, I concur entirely with the comments of Mr. Warner and Ms. Gigantes. If the problem is an evidentiary one and we have picked one year as a way of determining the permanency of a common law relationship, even stronger than that assumption is a written contract which says in effect: "We want to live together. We intend to make this permanent." That should have more weight as evidence in a court of law than the passage of one year, which may have been inadvertent.

If the Ministry of Labour is wondering what the feeling of the committee is, it can count on at least three votes in favour of that kind of amendment.

Ms. Gigantes: I pass.

Mr. Chairman: Ms. Gigantes passes. Mr. Polsinelli is up. Let me say that I also tend to sympathize with the position put forward by Ms. Gigantes and Mr. Warner in that if the only reason for the one-year waiting period is

to provide proof positive of a relationship, then that is provided with the submission of a document or agreement between the two common law spouses. In effect, it provides the same kind of evidence that one would need for a one-year delay. I tend to be sympathetic to a notwithstanding kind of provision.

Mr. Warner: If you are supporting me, I will have to examine my position.

Mr. Chairman: I thought you might. That is why I lunged forward so quickly indicating that I might support you. I knew that would cause a rethink of whatever it was you were putting forward.

Hon. Mr. Scott: I want to bring Mr. Partington on side. Perhaps he and I can think about this overnight. If I understand the point he raises, it is that because of what we have done in the Family Law Reform Act, there is something not legitimate until you live together for three years. The problem is while that may generally be so, is it so when the termination of the relationship has been achieved by death, as it will not always be but often is under these amendments? How can you say, for example, under the Surrogate Courts Act, that the relationship is not legitimate if it never had the chance to achieve three years? Perhaps that is the difference between us which we could accommodate.

Mr. Partington: I will check the section of that act. It may be just a matter of principle that those rights should accrue to a common law spouse only if a length of time has passed. That is the substitute for a formal contract of marriage; it is living together for a period of time. I believe society requires that.

5:40 p.m.

Hon. Mr. Scott: If I can put the other side of the case, we have in effect just dealt with insider trading in which the issuer spouse is one of the classes that cannot trade. I take it you would not say that the spouse has to be a three-year spouse before there should be a prohibition against insider trading.

Mr. Partington: To be consistent, I would probably have to. Anyway, it is an interesting point. I think we can get around it.

Mr. Polsinelli: While I am prepared to support the amendment of a relationship of one year's duration as put forward by the Attorney General, I think what we want to catch here are the relationships of some permanence. When the ministry is reassessing this section, perhaps it can look at a rewording of this section to indicate a case preceding death in a conjugal relationship "of some permanence" rather than defining a one-year period.

Further to that, they can add in a number of situations describing what "some permanence" means. For example, they could indicate that length of time would be a factor that goes to permanence. One of my concerns in this particular subsection, when we are dealing with a one-year period, is what if a child is born of the relationship prior to the one-year expiry? I am sure all three parties want that situation covered by this subsection, yet this subsection, as worded, would not cover it.

Hon. Mr. Scott: I have no objection to looking at the child as evidence, if you want, of the conjugal relationship. That might be a sensible thing to do.

I am troubled about trying to have a general definition and then some criteria. What we are dealing with here substantially is filling in a form. We are not dealing with a judicial hearing mechanism. When we deal with a judicial hearing mechanism, we simply say: "If you find her the spouse, that is it. Use whatever indicia are reasonable in the circumstance."

If we are dealing with a form, as we are with the Workers' Compensation Act, I would be glad, if the committee did not object, to consider not only a cohabitation contract but also a child of the parties as evidence that, short of a year, would permit entitlement.

Mr. Chairman: Does that satisfy your concerns, Ms. Gigantes?

Ms. Gigantes: Yes.

Hon. Mr. Scott: Perhaps you could stand this down, Mr. Chairman. I think Mr. O'Connor had a question.

Mr. Chairman: Do you want to speak further to this, Mr. O'Connor?

Mr. O'Connor: I was going to raise the question of the child, but Mr. Polsinelli did, and I thank him for that.

I want to make one further point. Keeping in mind that we are dealing with the decease of probably the primary wage earner in the family, it is most important where there is a child--perhaps more important than in the other circumstances--that there be some moneys available for the support of a widow and a child.

Mr. Chairman: Is it agreed that we stand this section down for a rewording opportunity to cover the concerns expressed by committee members? That is agreed.

Hon. Mr. Scott: Those are the simple ones. We could go back to the Retail Business Holidays Act, although Mr. Warner is not here.

Mr. Chairman: I would rather not do that in his absence.

Hon. Mr. Scott: I suggest then that we begin with section 1. Could I ask Ms. Gigantes, who has a building code amendment, which we have heard about, if we could stand that down so we can get that caucused? Then we will deal with it next day or some other time.

On that basis, we have work that will occupy us from sections 1 to 11 at least.

Mr. Chairman: It is agreed that we stand down the amendment to section 2 with respect to the building code. We will deal with section 1, then go to section 3. None of the ones I have mentioned have any amendments proposed. It is a question of dealing with what you have before you in the bill.

Hon. Mr. Scott: Section 1 is one for Mr. Partington.

Mr. Chairman: All right. We may go through these rather rapidly depending on how quickly the committee wishes to proceed. I can call for section 1 to carry.

Section 1 agreed to.

Mr. Polsinelli: Mr. Chairman, can I ask a question of the clerk?

We have been handed a bundle of amendments, including Ms. Gigantes's building code amendment. Are these other ones incorporated--

Clerk of the Committee: No. We have just received them.

Mr. Polsinelli: So these are all new amendments.

On section 3:

Hon. Mr. Scott: I will not vex Mr. Partington with it now, but he would want an amendment to this if we were concerned about consistency. This section perhaps makes my point that if you are in a conjugal relationship, even though it had not been three years, you should still be entitled to apply for an order that your spouse is an absentee. Otherwise, you would have to say, "You have to wait three years to make the application, because even though you had a relationship, it had not been shown to be permanent."

Section 3 agreed to.

On section 4:

Mr. Chairman: I want to give you a moment to familiarize yourselves with the section. I have been on committees before when we have rushed through these and then had to go back. My delays are not because I do not know where I am; rather, I am waiting until I see you look up and then I will call the motion.

Section 4 agreed to.

Clerk of the Committee: Section 2 of the bill as it is does not deal with the building code. Perhaps we could carry that now.

Mr. Chairman: We could, I suppose. Is it the committee's wish that we pass section 2, which is not related to section 2a, and come back to section 2a?

Interjection: Yes.

Section 2 agreed to.

On section 5:

Hon. Mr. Scott: Section 5 is a case where the surrogate court model has been used, in which there is no time limit, on the theory that the Criminal Injuries Compensation Board will look at whatever evidence there is of conjugal relationship, make a determination and answer the question, was there a common law relationship at the moment of the violent end?

5:50 p.m.

Mr. Chairman: As soon as I get an indication that he has read it and Mr. Callahan has so noted, we will carry on.

Section 5 agreed to.

Sections 6 and 7 agreed to.

On section 8:

Hon. Mr. Scott: The problem here, and the reason we have taken one year rather than three years or none, is that under the Coroners Act a spouse is given certain rights which are determined, not by the coroner's jury but by the coroner who conducts the hearing.

For example, the spouse is given the right to a record of the investigation where the coroner decides an inquest is unnecessary. If the coroner turns down an inquest, the spouse can come along and say, "I want a record of the investigation."

The spouse has the right, which others do not have, to request an inquest.

The spouse has the right, you will be interested to hear, to object to the extraction and use of the pituitary gland of a spouse. The pituitary gland is, of course, a matter that calls for an instant decision because if the coroner is about to direct the coroner's staff to conduct the autopsy and a person comes along and says, "I object to the removal of the pituitary gland," there is not time to conduct a judicial hearing to determine whether the person objecting is the spouse, an interloper or a stranger. In that circumstance, where it is not a judicial exercise but is an administrative exercise, there has to be a statutory standard to which the coroner can refer and which is clear.

Mr. Polsinelli: Can we use the same definition that we used for section 58? A contract, a child or one year?

Mr. Chairman: I wondered about that. It would seem to have some relevance.

Hon. Mr. Scott: There is no reason--

Mr. Chairman: If you wish to make the two sections uniform, we can stand this down until we have the rewrite of the previous section and then have them uniform.

Hon. Mr. Scott: The spouse will be fascinated by the coroner's question before the pituitary gland extraction is permitted, which is, "Do you have a child?"

Mr. Chairman: Do you want to stand down section 8?

Interjection: Yes.

Mr. Chairman: All right.

On section 9:

Hon. Mr. Scott: Mr. Partington, in our ongoing exercise, how are you going to distinguish this one?

Mr. Partington: I had better read it first.

Mr. Chairman: That is usually helpful.

Hon. Mr. Scott: "Associate" is defined under the Corporations Act to include close relations, if I can put it that way, of the corporation or its

incorporating directors. A marriage certificate spouse is an associate. It is not an insider trading question, but it is a kind of conflict of interest question. We do not have a time limit here. Insider trading, by your theory, would be permitted as long as you have not lived together for three years.

Mr. Partington: There is a difference between receiving certain rights that flow to a spouse as opposed to making sure that the affairs of commerce and government are dealt with in a fair and noncriminal way and that the fiduciary relationship is maintained, so I can distinguish the two.

Hon. Mr. Scott: Or, to put it another way, in the flush of the first three years of your relationship, any conflict of interest is tolerable.

Mr. Partington: No. I did not say that.

Ms. Gigantes: What he is saying is that as long as there is no public benefit from a nonmarriage relationship, then he will be satisfied.

Section 9 agreed to.

On section 10:

Ms. Gigantes: There seems to be a special requirement for credit unions and caisses populaires that does not exist for corporations because in the case of credit unions and caisses populaires, you cannot involve your son or daughter.

Hon. Mr. Scott: That is not so, because the Corporations Act goes on to provide for any relative of the person, which would incorporate sons or daughters.

Ms. Gigantes: Thank you.

Section 10 agreed to.

On section 11:

Hon. Mr. Scott: This simply permits an affirmation.

Mr. Chairman: So it is the same as the section referred to previously.

Hon. Mr. Scott: Yes.

Section 11 agreed to.

Hon. Mr. Scott: We now come to some motions. There is one under the Education Act, which Ms. Gigantes has, and one under the Employment Standards Act. I would like these to be properly caucused, if we may, and I ask that they be stood down.

We could go to section 14, which is the Execution Act. We have an amendment here that has not been circulated. Perhaps we had better stand it down as well. I think it is technical, but we will circulate it. Let us just hold it.

Section 13 is the Election Act, which we have dealt with.

Ms. Gigantes: We passed the whole thing.

Hon. Mr. Scott: Section 13a is the Employment Standards Act. Section 14 is the Execution Act, and there is an amendment there. Section 15 is the Family Law Reform Act, which we have passed. Section 16 is the Forest Fires Prevention Act.

Mr. Chairman: We can move to 16 then.

On section 16:

Hon. Mr. Scott: This permits the fire officer to compel the assistance of physically fit males aged between 18 and 60. The amendment is designed to remove the age limits and make it apply to every able adult person. An adult, of course, is over 18. The words "over 18" are used in the section for clarity.

Mr. Chairman: It effectively deletes the upper age limit and replaces that with "physically fit."

Hon. Mr. Scott: Yes, and it requires women to be summoned as well. All those people out there who say that women are not having burdens imposed on them by equality can look at the kinds of amendments we are making here today.

Ms. Gigantes: They have been putting out fires for years.

Mr. Callahan: Starting a few too, I would say.

Mr. Chairman: Then we can anticipate they will be on the front line.

Ms. Gigantes: Does this mean that someone under age 18 cannot volunteer to fight a forest fire?

Hon. Mr. Scott: No. It simply means he or she cannot be compelled.

Ms. Gigantes: Conscripted.

Section 16 agreed to.

On section 17:

Hon. Mr. Scott: Section 17 refers to a provision in section 13 of the Fraudulent Debtors Arrest Act which says that "A married woman is not liable to arrest on mesne or final process." That was a paternalistic restriction on the right of a person asserting a fraud to take a kind of execution against a married woman. There is no purpose in this section, bearing in mind the present state of the law, and we ask that it be repealed.

Mr. Chairman: Could I digress for a moment? We do not have a sufficient number of copies of the amendments to section 14 being proposed by the Attorney General to circulate them all now. I am going to ask the clerk to give them to the critics and we will provide other members with those copies through the Attorney General's office as soon as possible.

Do we have a section being proposed by Ms. Gigantes with respect to section 17?

6 p.m.

Hon. Mr. Scott: As I understand it, Ms. Gigantes has an amendment we have been calling 17a, which is the Human Rights Code.

Ms. Gigantes: Right.

Hon. Mr. Scott: May I ask that it stand down?

Ms. Gigantes: Yes, please.

Mr. Chairman: All right. We will deal only with 17 and not 17a now.

Mr. O'Connor: The section deletes the words "a married woman is not liable to arrest." Does that mean she is liable to arrest?

Hon. Mr. Scott: Yes, just as a married man is.

Mr. O'Connor: All right. It brings it into compliance with equality with a married man.

Hon. Mr. Scott: Yes.

Section 17 agreed to.

Mr. Chairman: For the record, we will stand down section 17a.

On section 18:

Hon. Mr. Scott: The Human Tissue Gift Act provides that the minimum age for giving consent is changed from the age of majority to 16 years. The purpose of this amendment is to make it consistent with medical consents required under statutes such as the Public Hospitals Act. That act requires certain consents and permits them to be given at 16. We ask that the Human Tissue Gift Act be brought into compliance with the Public Hospitals Act and similar legislation.

If we leave the Human Tissue Gift Act at 18 and the Public Hospitals Act at 16, we leave them both susceptible to attack. Someone will say, "We have used 18 in other cases," which is true, "and we have used 16 in other cases," which is also true. We are aiming for rational consistency, bearing in mind the nature of the subject matter. Instead of moving all the Public Hospitals Act consents up to 18, we propose to lower this one.

The second part of the amendment provides that a substitute consent may be given by certain relatives, including a spouse, to the use of a body after death. Again we are defining "spouse" using a one-year cohabitation, for reasons we have canvassed before. If you want us to bring in an amendment about marital contracts or a child, we will be pleased to do so.

Mr. O'Connor: Yes, please.

Hon. Mr. Scott: Then perhaps this should be stood down.

Mr. Chairman: All right.

Ms. Gigantes: That is subsection 18(1)?

Hon. Mr. Scott: Yes. It might be easier to deal with the whole section at once.

Mr. Chairman: That might be a little tidier. Section 18 is stood down.

On section 19:

Hon. Mr. Scott: This act provides for making guaranteed loans to family farms. The amendment defines the term "family farm" to include a junior farmer and his or her spouse. "Spouse" is again defined as in the Human Rights Code. No time limit is provided here because whoever decides to grant the loan can make a judgement about whether or not the spousal relationship exists. No one would want to say that a young farming couple could not get a loan until they had cohabited for three years or one year.

Ms. Gigantes: If you are going to live with a farmer, it has to be a serious relationship.

Section 19 agreed to.

On section 20:

Hon. Mr. Scott: Here we have done something rather different. This has to do with the Juries Act.

Again, we are attempting to include all spouses as defined under the Human Rights Code and we are focusing on a claim for ineligibility by virtue of being the spouse of a person mentioned in subsection 3(1). I do not have that in front of me, but I think you are ineligible for jury duty if your spouse is the plaintiff, the defendant, the accused, or he or she is engaged in the process.

You are also ineligible if your spouse is already on the jury list. I think that is to prevent a situation in which two people who are spouses to each other get on the same jury panel hearing a case.

There is no time limit here and the question is resolved in the usual way by reference to the jury. The jury can try a question of fact, and often does. For example, if someone says, "He is so prejudiced that he cannot sit on a jury" and seeks a declaration of ineligibility, the method by which that is currently determined is to get three jurors to try that issue. They will hear the proposed juror say, in an examination, why he is prejudiced, and then they will decide if, in fact, he is prejudiced.

There is no reason they should not decide if one is a spouse of the other. They will be able to ask questions such as: "How long have you lived together? Where have you lived? Do you have a child? Do you have a marriage contract?"

Ms. Gigantes: "Do you live on a farm?"

Hon. Mr. Scott: It seems to me that, as a matter of principle, it would be wrong to permit a spouse to be on the jury, even if the relationship were new. A spouse of more than three years is more likely to find the accused guilty than a spouse of less than three years, if human nature--

Mr. Chairman: Is that the law according to Mr. Partington?

Hon. Mr. Scott: I am making fun of it, using every chance.

Mr. Chairman: He is whittling away at us.

Hon. Mr. Scott: We also have some disability provisions here that you may want to look at. Our provision is that the focus of the question of whether you should be entitled to serve on the jury should be not whether you have a physical or mental disability, but whether you have a physical or mental disability that will affect the discharge of your duties as a juror.

In the old days, you simply asked the question, "Is there a disability?" As a matter of principle, we think that is the wrong question. The real question is, "Is there a disability which precludes the capacity to perform a function?"

Ms. Gigantes: What part are you talking about?

Hon. Mr. Scott: The second part. It is repealing subsection 4(2).

Ms. Gigantes: Subsection 20(3).

Hon. Mr. Scott: The provisions in subsection 4(2) of the Juries Act are now narrower than I actually stated.

"(2) Every person is ineligible to serve as a juror, who,

"(a) in the year preceding the year for which the jury is selected had attained the age of 69 years or more"--we are repealing that--"or (b) is blind, and has indicated on his return to the jury service notice that he does not wish to serve as a juror."

We are saying, in effect, that those who are over 69 and those who are blind should fulfil their normal responsibilities as citizens unless there is some disability which bears on the particular function of the case. We do not accept that a juror who is blind is unable to come to a just result in a jury case.

There may be a jury case in which being sighted is important from the point of view of the case, as they may have to look at plans or something, but that is something that can be determined when the case is called. Blind people should not be excluded from our legislation just because they are blind.

6:10 p.m.

Ms. Gigantes: That is not what the current section says; it talks about a blind person who requests to be removed from the case.

Hon. Mr. Scott: It gives them a preference. We do not impose a disability on them or give them a preference. They are ordinary citizens in the community. Interestingly enough, one of the submissions I received--not before the committee--was from blind people who feel this section is an example of paternalism which fails to understand the nature of their disability. Many blind people feel their ability, for example, to tell who is telling the truth when two accounts are given to them, is heightened by the sensitivity to sound which they often have when they are blind.

Ms. Gigantes: When you remove subsection 4(2), what you have is a general clause that says somebody who has a disability which will--

Hon. Mr. Scott: We will leave 4(1), which provides: "A person is ineligible to serve as a juror who (a) has a physical or mental disability that would seriously impair his ability to discharge the duties of a juror, or (b) has been convicted of an indictable offence, unless he has subsequently been granted a pardon." Clause (b) is not relevant.

Ms. Gigantes: Subsection 4(1) does not refer to the explicit nature of the case.

Hon. Mr. Scott: It probably does, because what will happen is, if a blind person is called on the panel, is selected and comes forward and says, "I am blind," there will then be a determination made as to whether that is a physical disability that would seriously impair his ability to discharge the duties of a juror. I think that would be looked at in terms of the actual case that is involved. One of the questions of the crown attorney will be, "Are there going to be documents in this case which have to be read?" If there are, that may point to a serious impairment of the ability to discharge the case. If the documents are short and can be copied in Braille--which is now readily available--there should be no impairment. If the documents need to be examined for smudges or precise interlineations, it may be that there is an impairment.

What we are trying to do is fine-tune the disability to the duty.

Ms. Gigantes: Subsection 4(1) does not really fine-tune but will probably do as you say.

Hon. Mr. Scott: Yes. You would be happier if it said, "to discharge the duties of a juror in that case." I think that is the way it is treated.

Ms. Gigantes: One would hope so.

Hon. Mr. Scott: Mr. O'Connor might know more about it. If he does, he is not going to tell us.

Mr. O'Connor: I was just trying to recall, as you were speaking, and I just do not recall a circumstance ever arising. I have had not had sufficient experience in jury cases, I guess.

Ms. Gigantes: Perhaps we could say "that case."

Hon. Mr. Scott: I would be inclined, if I could, to leave it the way it is. One of the realities is that jury panels are quite large. I do not know what they are in Oakville, but I think in Toronto there are a couple--

Mr. O'Connor: About 80.

Hon. Mr. Scott: I think they are even larger in Toronto. What the sheriff wants to do is to make some preliminary exclusions. Unless there was an objection, the sheriff would exclude a person who is seriously mentally disabled at the beginning of the panel's work. The panel's work may go on for two or three weeks, coming back every day. There are some people whose disability will be so clear in relation to any or all cases that you might as well excuse them on the first day and not bring them back day after day as new juries are selected out of that panel. It is a little undignified for a person who is seriously mentally disabled, to the point that he or she is probably unfit for all cases, to have to come back and be rejected day after day.

Ms. Gigantes: I certainly would not argue with that. It is just that subsection 4(1) is not as precise as one might hope, and the whole thing probably needs to be looked at.

Hon. Mr. Scott: Let me agree that we will take that under general advisement. I do not think we could do it here, but it is something that should be looked at. You are quite right. Indeed, the whole panel system raises some real questions.

Mr. Chairman: What is your wish on section 20?

Section 20 agreed to.

Ms. Gigantes: Could section 34 of the Juries Act be read?

Hon. Mr. Scott: "The presiding judge before whom a civil case is or may be heard may in his discretion on an application made by or on behalf of the parties or any of them or at his own instance, make an order for the jury to be composed of men only or of women only, as the case may require." That, I think, is the remnant from an earlier age when certain cases were considered unsuited to women.

Ms. Gigantes: Thank you.

On section 21:

Hon. Mr. Scott: The Justices of the Peace Act.

Mr. Chairman: Again, that is the affirmation paragraph--

Hon. Mr. Scott: Yes, it is.

Mr. Chairman: --which is standard. We have dealt with that a couple of times before.

Section 21 agreed to.

On section 22:

Mr. Chairman: This is a compliance section, is it?

Hon. Mr. Scott: There are two things done here, as I understand it.

The first is that every time the Human Rights Code is amended, the Labour Relations Act, which, in effect, enforces the prohibited grounds of discrimination, has to be amended as well. That can be avoided if we simply remove the phrase in the Labour Relations Act "his race, creed, colour, nationality, ancestry, age, sex or place of origin" and insert "any ground of discrimination prohibited by the Human Rights Code, 1981, or the Canadian Charter of Rights and Freedoms."

The next amendment under section 22 is an affirmation question. The third and fourth amendments are like the first.

Mr. Chairman: Shall section 22 carry?

Section 22 agreed to.

On section 23:

Hon. Mr. Scott: The Landlord and Tenant Act. We have the one-year hearing. Perhaps it should be deferred.

Vote deferred.

6:20 p.m.

Hon. Mr. Scott: We have dealt with the Law Society Act; that is section 24.

On section 25:

Hon. Mr. Scott: Clause 15(a) of the Legal Aid Act has a provision that "a certificate"--that is, a legal aid certificate--"shall not be issued to a person ... in proceedings wholly or partly in respect of defamation or loss of service of a female in consequence of rape."

Interjection: Who is going to ask?

Hon. Mr. Scott: The theoretical purpose of the repeal is not to impose a certificate restriction that is based on a gender crime. Why should the fact that a female was involved in the case have a bearing on whether a legal aid certificate is issued? We are trying to remove gender from these considerations. We remove it by repealing the section.

If that raised any policy doubt in your mind, I think the action to which section 25 applies no longer exists at common law. I am not absolutely certain about that, but I think that is--

Mr. Callahan: It is excluded--

Ms. Gigantes: Does it not mean that you cannot get a certificate in order to pursue such a case?

Hon. Mr. Scott: Let me take it back. At common law, if a daughter is raped, the father of the daughter had an action for damages for loss of her services against the person who raped her. Apart from any criminal proceedings, a father of a raped daughter could sue and make the case that "my daughter has become less useful to me." It is mid-19th century stuff that a daughter who was raped might not be employable, might not be able to support herself, might not get married and would be a drain on the father for ever. Therefore, a father was given that action.

Today, if a father attempted to sue for that action, the accused could not get a legal aid certificate to defend it. We are giving him a legal aid certificate, if he is sued. He is not going to be sued because that action has been, in effect, written out of the common law. There is another action, however, which can be brought by an employer. An employer can sue for the loss of the service of a servant.

For example, if a highly valued servant is raped with the result that she is hospitalized for a year working out the trauma associated with it, the employer would have an action against the person who raped her. "I have invested thousands of dollars in training this woman. She is now disabled. I have lost my investment." The employer could also sue over losing the service of a man as a result of a misconduct by someone. In that case, the action is still alive.

There is no reason why a certificate should not issue. Ironically, a certificate would now issue if this employer was suing for the loss of a male servant. It would not issue with section 25 if the employer were suing in respect of the loss of a female servant by virtue of rape.

Ms. Gigantes: Now I am totally confused.

Hon. Mr. Scott: Can I begin again? At common law there were two actions, both against the rapist. One was by the father against the rapist for the loss of the service of his daughter; she cooked and looked after him. The second was the lawsuit brought by an employer against the rapist because he lost a servant in his business.

Under section 25, the accused in those cases could not get a legal aid certificate because it depended on rape. It is part of the theory that he should not get legal aid if his crime exposes him to a civil proceeding. We think that is a gender-related discrimination and should be abandoned. The consolation of abandoning it is that half of the actions originally contemplated no longer exist. Am I doing worse?

Ms. Gigantes: Yes. I do not know what to suggest.

Hon. Mr. Scott: Do you want to put it down?

Ms. Gigantes: I would like to put it down because I simply cannot follow what is intended there. I thought I had in the first place, but clearly I have not.

Hon. Mr. Scott: I confused you then. Where are we now? We are close to home now.

Mr. Chairman: On section 26. Section 25 was stood down.

On section 26:

Hon. Mr. Scott: This is just an oath.

Mr. Chairman: Section 26 is not carried yet.

Ms. Gigantes: Section 17 of the Libel and Slander Act.

Hon. Mr. Scott: That is the next one.

Ms. Gigantes: Sorry.

Mr. Chairman: Shall Section 26 carry?

Section 26 agreed to.

On section 27:

Ms. Gigantes: What are we accomplishing here?

Hon. Mr. Scott: Section 17 of the Libel and Slander Act. Let me see how I can get through this.

Mr. Chairman: Do you want to stand it down and save yourself some time?

Hon. Mr. Scott: No. Libel is in writing; slander is by words. When you sue for libel, you have to show that you have been damaged before you can recover. If you sue for slander--and this is also true of libel--there are certain cases in which damage is presumed by virtue of what is said or the relationship between you and the person who speaks of you.

For example, if you speak of a lawyer and allege that he is a thief, he can sue without showing that he has been damaged because it comes so close to the nature of his career that you do not have to prove any damage. It is as if it is presumed.

One of the presumed damages is section 17, which says: "In an action for slander for defamatory words spoken of a woman imputing unchastity or adultery, it is not necessary to allege in the plaintiff's statement of claim or to prove that special damage resulted...."

What we are saying there is if you say of a man that he is unchaste or adulterous, you have to prove a special damage before you can succeed. If you say of a woman that she is unchaste or adulterous, you get--

Ms. Gigantes: That is it.

Hon. Mr. Scott: That is it. It is a benefit that the law created in favour of women against whom it was alleged that they were unchaste or adulterous. That benefit is discriminatory because men are not in the same position. We simply propose to remove it and leave both sexes to prove damage.

Ms. Gigantes: Fair enough.

Mr. Chairman: Any other questions on section 27?

Section 27 agreed to.

Mr. O'Connor: I move that we adjourn.

Mr. Chairman: That would seem an appropriate motion at this time.

Motion agreed to.

Mr. Chairman: We will carry on tomorrow. We have made quite a considerable amount of headway. I am most proud of this committee and of the way it expedites matters.

Hon. Mr. Scott: Mr. Chairman, can I make this observation to the committee?

We are almost through the sections of the bill to which there are no amendments. It seems to me that if we meet tomorrow, we will be dealing either with some disputed government amendments or some disputed opposition amendments. Among the first to be dealt with will be the Human Rights Code. I will have the minister here if he wants to come. May I propose that we consider dealing with that tomorrow so that the minister will be present if you want to question him?

Mr. O'Connor: Which minister?

Hon. Mr. Scott: The Minister of Labour.

Mr. O'Connor: Is he the minister responsible for that entire code?

Hon. Mr. Scott: He is responsible for the entire Human Rights Code. I would propose, just so ministers do not have to come rushing back and forth, that if it would suit you we would go to the Human Rights Code first and take him through whatever amendments there are.

Ms. Gigantes: I would like to accommodate the Minister of Labour. However, my colleague, Mr. Warner, has indicated to me he may be a few minutes late tomorrow. I would hate for him to miss any of the delightful controversy that our minister promises us. I am quite willing to do that as long as my colleague is able to be present.

Mr. O'Connor: Do we have sufficient work outside of the Human Rights Code to take up tomorrow's schedule and launch into this next Monday?

Hon. Mr. Scott: We probably do not. The problem is that the Human Rights Code is the one we have to grapple with.

Mr. O'Connor: And the Mental Health Act.

Hon. Mr. Scott: We have more difficulty with that because of the availability of the minister.

Mr. Chairman: Could you give us an indication of when Mr. Warner might be available?

Ms. Gigantes: He thought he would be here at least by 3:45 p.m.

Hon. Mr. Scott: That is not a serious problem.

Ms. Gigantes: As long as we do not have any votes before then.

Hon. Mr. Scott: Prolong the question period. That is easy.

The committee adjourned at 6:32 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
TUESDAY, MAY 6, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Substitutions:

Poirier, J. (Prescott-Russell L) for Mr. Callahan

South, L. (Frontenac-Addington L) for Mr. D. R. Cooke

Also taking part:

Grier, R. A. (Lakeshore NDP)

Clerk: Mellor, L.

Staff:

Scnub, C., Deputy Senior Legislative Counsel (French)

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

Ewart, J. D., Director, Policy Development Division

From the Ministry of Labour:

Wrye, Hon. W. M., Minister of Labour (Windsor-Sandwich L)

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, May 6, 1986

The committee met at 4:14 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

On section 17a:

Mr. Chairman: Members of the committee, I think we can get under way. Section 17a is where we will begin our discussions this afternoon. I would like to welcome the Minister of Labour (Mr. Wrye) to our discussions. We will get under way with that section.

For the members who were not here yesterday, I do not know whether the clerk has had an opportunity to do a recap of what we have covered. We did a fair portion of the bill yesterday. We did most of the more routine items that adjusted ages and that kind of thing. They were not the controversial items. They were left for further discussion today and through the balance of the committee's discussions.

We will begin with section 17a. If the other members of the committee who were not here yesterday want an update, we can get that for them. We are all over the place on the bill, as the clerk and others who were in attendance are fully aware.

Does the minister want to make any opening comment with respect to this section of the bill?

Hon. Mr. Wrye: No, I do not. I have an interest in the proposed changes to the act. I am here to listen. I may wish to make some comments. The Attorney General (Mr. Scott) may make some comments at various times. It is my interest as minister responsible for the Human Rights Code that brings me here today.

Mr. Chairman: Does the Attorney General have any opening comments?

Hon. Mr. Scott: I have none, thank you.

Mr. Chairman: We will have comments from the members of the committee on section 17a.

Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"17a(1) Section 1 of the Human Rights Code, 1981, being chapter 53, is amended by inserting after 'sex' in the fourth line 'sexual orientation.'"

"(2) Subsection 2(1) of the said act is amended by inserting after 'sex' in the fourth line 'sexual orientation.'

"(3) Section 3 of the said act is amended by inserting after 'sex' in the third line 'sexual orientation.'

"(4) Subsection 4(1) of the said act is amended by inserting after 'sex' in the fourth line 'sexual orientation.'

"(5) Section 5 of the said act is amended by inserting after 'sex' in the fifth line 'sexual orientation.'"

Ms. Gigantes: I am moving the amendment because I think the time has come to amend the code to prohibit sexual orientation as a ground for discrimination in Ontario. Our own Ontario Human Rights Commission has for many years suggested that we take this measure. The Canadian Human Rights Commission has made the same suggestion, as have the provincial human rights commissions of other provinces year after year.

It is quite clear now that the public of Ontario would like to see this measure replaced. I think the public of Ontario feels unhappy that in 1986 residents of Ontario, citizens of this country who live in Ontario, can be discriminated against in their employment and in their search for housing and accommodation because of sexual orientation.

I encourage the members of the committee to support the amendment. It speaks to the kind of legislation we are looking for now that we have the Charter of Rights in place in Canada and the equality rights section of that charter has become effective in the provinces of Canada. For a great many citizens of this province, it will mean that they will know in the final analysis they have protection of the law if they wish to lodge a complaint with the Ontario Human Rights Commission because they feel they have been discriminated against on grounds of sexual orientation.

I suggest that while the existing state of affairs prevails and there is no legislative protection for people who feel they have been discriminated against on grounds of sexual orientation, it is possible for each and every one of us, no matter what our sexual orientation, to have such discrimination practised against us.

We know the nature of this kind of discrimination as it was with Jews in Nazi Germany. In effect, it is enough for a person to suggest that me or thee is of a different sexual orientation from most people for discrimination to begin to occur in a place of employment or in accommodation. These are matters that affect the very livelihood and lives of people. To provide in the legislation of Ontario that we do not accept such discrimination and that we provide a remedy against it through the actions of our Ontario Human Rights Commission, is only a measure of the time we live in. I think the time is now.

Ms. Fish: I am pleased to support this amendment as it has been placed. It is my hope that this will round out the series of things that have been added to the code in the 20-odd years we have had it, to move our society in a continuing fashion that ensures that people are hired or fired, obtain insurance, achieve their accommodation and generally go about their lives in all the different ways that we, as members of the society, go about our lives based on reasons that have to do with each step, that we are good tenants, that we have the capability and the merit to do a job, and not for any other reason. whether that reason was in the historic, very early days of the code,

race, religion or sex, whether it was in the intermediate steps questions of marital status or health disability, or whether it now is in this rounding-out area of sexual orientation.

Mr. Warner: I appreciate the comments by Ms. Fish. Perhaps common sense and justice is going to win the day. Like other members, I recall quite vividly the very eloquent presentations made before our committee on behalf of gays and lesbians, who have banded together as best they can to try to fight the discrimination to which they have been subjected over a number of years.

For me, it is a civil rights issue. I do not think there is any way to escape that. I do not know how, in the name of decency, anyone could discriminate against another individual in terms of employment or housing, or beyond that, in any form, simply because of a person's sexual orientation. I do not understand that. I never have understood it. It is a matter of simple and fair justice that we strengthen the Human Rights Code, as I detect we are about to do. It is a good moment for this province, and one of which we can all be proud, that a significant segment of our population that has been set upon for a long time will finally have some protection afforded it under our Human Rights Code. I think that is great.

Mr. South: I would like an explanation. Does this amendment affect or alter in any way the rights or privileges of couples for the adoption of children? Does it alter or change the fact that a homosexual couple could adopt children?

Mr. Chairman: The ministers are caucusing the question and will respond to the member's query in short order.

Hon. Mr. Scott: I think the answer is no, it does not affect that. Adoptions now are--assuming they are not private adoptions--regulated by recommendations made by children's aid societies. If I am up to date, I think they are still approved by the court. That process is designed to allow the tribunal or the children's aid society to decide what is in the best interest of the children, which is always primary. That decision will continue to be made by children's aid societies, which will apply the criteria they have always applied and look to what is in the best interests of the children.

Mr. Chairman: Is there anything further, Mr. South?

Mr. South: No, that is fine.

Mr. Polsinelli: I am pleased to join my colleagues from the other two parties in indicating my support for the amendment. As did most members of our caucus and I am sure the other two caucuses, I deliberated about this amendment for a while. My primary concern was that it would be misconstrued as an endorsement of a lifestyle. I now am firmly convinced that is not the case and that what we are doing is providing nothing more than a basic human right. That conclusion has led me to support the amendment.

As became evident in the committee hearings, a similar amendment was passed by the Quebec National Assembly. The fears expressed by some of the members of the Ontario Legislature are unfounded; those situations did not result. It was a fairly innocuous amendment in Quebec and did not result in any disastrous reactions.

A number of municipalities such as the cities of Toronto, Ottawa and Windsor have eliminated this ground for discrimination in their employment

practices. As an indication that we believe all individuals in Ontario are entitled to the basic rights and to the basic protections of our laws, I will support the amendment.

Mr. Chairman: Does anyone wish to speak further on this issue? I will call for the amendment first, in the normal fashion. If the amendment is carried, then the main motion will be for section 17a to be concurred in as amended.

Clerk of the Committee: No.

Mr. Chairman: The clerk is telling me that is wrong, so I will wait to see what I am doing wrong. What am I supposed to be doing?

Clerk of the Committee: We should move the amendment and then do the minister's amendment. We should do the amendment by Ms. Gigantes and then the other.

Mr. Chairman: All right. We will then move to the minister's amendments, which are in order following this. All in favour of the amendment that has been placed on the floor by Ms. Gigantes? Opposed?

Motion agreed to.

4:30 p.m.

Mr. Chairman: We will move to the government amendment to section 17a.

Ms. Hart moves that the bill be amended by adding thereto the following section:

"17a(1) Section 9 of the Human Rights Code, 1981, being chapter 53, is amended by adding thereto the following subsection:

"(2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

"(2) Section 10 of the said act is repealed and the following substituted therefor:

"10(1) A right of a person under part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

"(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

"(b) it is declared in this act, other than in section 16, that to discriminate because of such ground is not an infringement of a right.

"(2) A requirement, qualification or factor is not reasonable and bona fide in the circumstances if the needs of the group of which the person is a member can be accommodated without undue hardship on the person responsible

for accommodating those needs, considering the cost, business inconvenience, outside sources of funding, if any, and health and safety requirements, if any.

"(3) The commission or a board of inquiry shall consider any standards prescribed by the regulations for assessing what is undue hardship.

"(3) Subsection 16(1) of the said act is repealed and the following substituted therefor:

"(1) A right of a person under this act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.

"(4) Subsection 16(2) of the said act is amended by striking out 'the provision of access or amenities or as to' in the fifth and sixth lines.

"(5) Subsection 19(2) of the said act is repealed.

"(6) Subsection 20(3) of the said act is repealed.

"(7) Subsection 20(4) of the said act is repealed.

"(8) Subsections 40(2) and (3) of the said act are repealed.

"(9) Clause 47(a) of the said act is repealed and the following substituted therefor:

"(a) prescribing standards for assessing what is undue hardship (subsection 10(3))."

Hon. Mr. Scott: This amendment is moved on behalf of the government. It takes account of a number of amendments that we promised either in introducing the bill in the House or at the opening of the committee sittings on the bill. It may be that the committee will want to deal with them separately.

Mr. O'Connor told us yesterday that the committee from the Conservative caucus is to be a little differently constituted for the discussion of the sports amendment.

For our part, subject to what you say, Mr. Chairman, we have no objection to a convenient method being developed so that whoever wants to speak to whichever part of this package can do so. I do not know how that can be done but I am sure it can be arranged.

Let me describe briefly what the amendments do, if there is any doubt. The first is a self-evident amendment. It provides that the prohibited discrimination on the basis of sex will include the right to equal treatment without discrimination if a woman is pregnant.

When the bill and others like it were introduced as human rights codes in various jurisdictions, it was initially thought that the pregnancy provision would be unnecessary because a liberal interpretation of the "no sexual discrimination" provision would carry with it protection for women, not only on the basis of their sex but also on the basis of a component of their sex, which is the possibility of pregnancy. Some judges have so concluded, but the majority have not and have looked to the code to be more specific. It is

for that reason that we propose this amendment, so that henceforth the matter will be without any doubt.

The section says exactly what it means, and an application can be made to the Ontario Human Rights Commission if a woman feels she has been discriminated against, for example, in her employment because she is pregnant. It will be for the commission to decide whether the discrimination is a result of the fact she is pregnant or a result of something else, or whether pregnancy or the absence of pregnancy is an appropriate job qualification.

I envisage a circumstance in which it may be possible to say that the fact a woman is pregnant may disqualify her for a certain type of job. For example, if a job became vacant that required very intensive work over the next six months and if the woman who applied declared she was in the sixth month of her pregnancy, it might be conceivable to say, without the prohibited discrimination: "Look, you are going to have a baby. If the baby is born after nine months, that means you will be away for at least a couple of days. Therefore, we cannot hire you for this particular job." That matter will be left to the commission. On the face of it, discrimination on the basis of pregnancy should be prohibited.

The second series of amendments deals with discrimination relating to access to premises. We had a long discussion about this. I know other members of the committee have views about how this amendment can be more effectively advanced. Some important issues have been advanced in the submissions. It is important that we deal with this very carefully so that the real interests of disabled people are protected but so that there is not an unwarranted--I emphasize unwarranted--burden on private businesses that may not have the financial capacity to build the type of access that may be required from time to time.

Subsection 17a(5) is the sports amendment, with which the committee is fully familiar, having heard a large number of submissions on that subject. I think there will be some amendments in relation to that. Subsection 17a(6) relates to the fact that subsection 20(3) of the act provides that the act does not apply with respect to discrimination on the basis of marital status with respect to occupancy of residential accommodation where the building contains no more than four dwelling units, one of which is occupied by the owner or his or her family. This is repealed, and subsection 17a(7) deals with subsection 20(4) of the code, which has a comparable provision.

The effect of these two amendments is to prohibit what is normally called adults-only housing. You will have heard about that in the course of the submissions made to you. The government advances all these amendments for your consideration.

4:40 p.m.

Mr. O'Connor: Mr. Chairman, with respect to how we proceed on this matter, we would be prepared to proceed today with regard to subsection 17a(1) dealing with a woman who is or may become pregnant. Similarly, we would be prepared to proceed with subsection 17a(5), dealing with subsection 19(2) of the Human Rights Code. As the Attorney General has pointed out, we have tabled an amendment in this regard that, from the wording of it, perhaps, should be put and dealt with prior to the subsection 17a(5) amendment, which repeals the entire subsection 19(2). My amendment deals with amending subsection 19(2) and if there is no subsection 19(2), should the Attorney General's motion carry,

it will be somewhat difficult thereafter to amend it. I am suggesting we deal with my amendment first.

Hon. Mr. Scott: Otherwise, you would have nothing to say.

Mr. O'Connor: I would have nothing to amend and nothing to say, but I assure the Attorney General I have lots to say.

Similarly, I would suggest that we go on to subsections 17a(6) and (7), which deal, respectively, with subsections 20(3) and 20(4) of the code. I expect there will not be very much controversy on these. However, with regard to subsections 17a(2), (3), (4), (8) and (9) of the amendments, which clarify the rights of the handicapped, as the Attorney General has pointed out, some of us would like to have additional time to consider the amendments we will be putting.

I have today delivered a series of rough amendments to legislative counsel for drafting. I am suggesting, and some of the other members are in agreement on this, that those subsections be put over to be dealt with next Monday or Tuesday. We can carry on with the balance of the provisions in that section and complete them today.

Mr. Chairman: Before I go to Mrs. Grier, let me indicate that it was the intention of the chair first to place the government's amendments, which have now been read into the record. Those were to be followed by an amendment Mrs. Grier has, and I believe she has some modification of what she has tabled with the committee, which she may wish to speak to. Then we will go to Mr. O'Connor's amendments, representing his party's views with respect to this issue. I believe Ms. Gigantes also has an amendment on this one. Then we will vote.

With the concurrence of the committee, I will deal with all amendments prior to calling a division on any one of the amendments. At that point we can go back and I would hope be able to proceed in chronological order, at the same time taking some of Mr. O'Connor's concerns into account. The tabling of your further amendments is at the wish of the committee, because the deadline has passed for the tabling of amendments with this committee.

Mr. O'Connor: According to procedure, amendments can be placed by any member at any time. It was an informal agreement at best and was subject to what Mr. Warner indicated: that if any of us had great inspiration during the debate, we would be at liberty to place further amendments. I had that great inspiration, I can tell you.

Hon. Mr. Scott: Does your amendment qualify?

Mr. O'Connor: Yes, it does.

Mr. Chairman: I was not implying you were out of order, Mr. O'Connor. I was simply suggesting that the time frame within which amendments were to be tabled was circulated to the committee and agreed upon. I would assume that in a display of this committee's usual flexibility, we will find some way to accommodate you. I cannot in some anticipatory way decide that in advance. I will go to Mrs. Grier now.

Mrs. Grier: I am pleased the Attorney General has accepted my suggestion to repeal subsection 20(4). Perhaps before I move the other part of my amendment, it would be in order to ask him why, in view of his statement

that he wants to ban adults-only apartments, he did not feel it was also necessary to do as I suggested, which was to amend clause 9(a) of the code. My understanding is that it is a definition of "age" that is 18 years or more. When you go to section 2 of the code, every person who occupies accommodation has a right to freedom from harassment by virtue of age. It was our sense that in order to achieve what the Attorney General is trying to achieve, we had to do the two amendments.

Hon. Mr. Scott: As I understand Mrs. Grier's amendment, it puts an age cap of 65 on the matter and extends it below 18. She asks why I oppose those. The reason is that there may be--I am not certain, but we are moving to this very quickly--some difficulties about the execution of enforceable leases executed by persons under 18. I am aware, for example, that in certain housing in Toronto--it may even be government housing and it may even be in my constituency--admission to housing will not be permitted if a person cannot sign a lease. The law provides that a lease is unenforceable if it is signed by someone who is not an adult. That presents a practical problem that we hope to address. We may be able to address it in due time before the matter gets to the House, but I am not satisfied with the amendments Mrs. Grier proposes in that respect.

Mrs. Grier: The purpose of my amendment is merely to prevent any loophole that would allow this definition to be used to discriminate against someone who is less than 18 years old.

Hon. Mr. Scott: I understand that, but if a person who is 17 applies for housing and is rejected, I have no particular difficulty in making it an act of prohibited discrimination to reject him or her if it is done merely on account of age. The fact is that it is done on account of age because they cannot sign a valid, subsisting and enforceable lease.

What your amendment threatens to do is to say that, in all such accommodation in Ontario, people will be admitted to housing even if they cannot sign enforceable leases. While that may have certain policy components that are desirable, it is a fundamental alteration not of human rights law but of real property law. In the first place, I do not know whether that is appropriate in this act; and in the second place, it bears some consideration. For example, if it is the view of the committee that a person should be authorized to sign leases even though those leases are unenforceable at law, I do not know where we are left. It presents that major difficulty for me.

Mrs. Grier: I understand the Attorney General's difficulty and, frankly, I do not have a solution to the difficulty we saw, not thinking so much of occupants as of somebody as a member of a family, which was that somebody with a child could be discriminated against.

For the committee to consider that in the appropriate course of its discussions, I would like move that the bill be amended by adding thereto the following subsection:

"17a(1) Clause 9(a) of the Human Rights Code, 1981, being chapter 53, is amended by adding at the end, 'and in section 2, where "age" means an age that is less than 65 years.'"

Hon. Mr. Scott: Just to make it clear, it seems to us that it should continue to be an appropriate requirement that a landlord of a building may say, "I require a lease to be executed before admission will be given to the building." If the lease cannot be executed because it is unenforceable by

virtue of the age of the person executing it, I do not think that person should get admission to the building on terms that would not be available to anybody else. That is the problem. It may be that we can address it in some fashion, but that is the problem.

Mrs. Grier: I understand your problem.

Ms. Gigantes: I fail to understand how all these matters connect. If a person under the age of 18 becomes a mother, is she not held responsible in law for the child? Is she not involved in a legal sense in financial responsibility for the child? Would the father not be held responsible under family law?

Hon. Mr. Scott: The answer is maybe yes, maybe no. Having just done the Family Law Act, you will have as good a judgement on that subject as anybody. The reality, as I understand it, is that this is not a law to amend the substantive law of landlord and tenant or real property; it is a law to remove disabilities that are judged by the committee to be in breach of section 15 of the Charter of Rights. One of those disabilities would normally be age.

4:50 p.m.

Are you trying to advance an amendment that would permit someone under 18 years of age to be admitted to a building on terms that would not be available to someone over 18? The person over 18 can be required to sign a lease. The person under 18 can be required to sign a lease, but everybody will recognize that the lease may--I underline may--be enforceable.

There are certain cases where a lease may be enforceable against a minor. It depends very much on the nature of the lease and its purpose. That is not simple, because there is a law of necessities, which will protect the enforceability of even a contract signed by a minor. However, if a judge concluded, for example, that the apartment was too large and was not, therefore, technically a necessary, the lease would become invalid.

It is not always that I see these things from the point of view of landlords. It would be difficult to say to landlords, "You can ask people to sign leases, but if someone comes along who is under 18, you cannot ask that person to sign a lease."

It seems to me that the remedy Mrs. Grier is looking for is either one in respect of public housing, which we achieve by waiving the requirement--which is a matter that is being considered--in favour of young women who have children, or by altering the law of landlord and tenant.

Ms. Gigantes: That does not meet the problem. The problem is that most single-parent women who are under 18 are not going to be able to find public housing accommodation. What we have now is a situation where they are cut out of the private market. The amendment is an attempt to deal with the fact that they cannot operate in the private housing market at all.

If that amendment is not acceptable because of the law of necessities, which does not seem to take into account the necessities of life of a mother and child when the mother is 18, then we need some kind of firm commitment that it is going to be dealt with. It is not just a matter of saying that we will waive the rule against single-parent mothers under the age of 18 having admission to public housing when the public housing is not available anyhow.

we must also deal with the rights of a person who has the legal responsibility for a child and, in fact, may have enforceable rights in law against the father of that child under our family law legislation but who cannot be allowed to sign a lease and find accommodation in the private housing market.

Hon. Mr. Scott: Just so my complete reaction to Mrs. Grier's amendment will be out, I will focus on the other part of Mrs. Grier's amendment, which is essentially to eliminate protection in the above-65 class. Some of the submissions we heard contemplated the possibility that it might be in the public interest to permit senior citizens, not adults, to have buildings in which there were no children.

Mrs. Grier's amendment makes that impossible. I do not think it is her intention to make that impossible, but that is the effect of what she has done. In other words, the government proposal is to say that adults-only apartments are banned but, in effect, an affirmative action program for adults beyond 65 would be permitted. I am not sure Mrs. Grier did not agree that this should be done, but I am advised that the effect of her amendment is to make it impossible.

Mrs. Grier: Even in publicly operated senior citizens' buildings? That was not my understanding. Does section 14 of the Human Rights Code not provide that "a right...to nondiscrimination because of age is not infringed where an age of 65 years or over is a requirement, qualification or consideration"?

Hon. Mr. Scott: Why does not Mr. Ewart, who is wiser than I am, speak to it? I think one of the results of what you have done--loud applause from my friend Mr. O'Connor--is that you have made it, in effect, impossible for a 66-year-old to claim accommodation without discrimination.

Mrs. Grier: Even given the wording in section 14?

Hon. Mr. Scott: You are going to hear a wise voice now.

Ms. Fish: Maybe Mr. Ewart could walk us through, because I am now lost between what Mrs. Grier has been saying and what the Attorney General is saying.

Mr. Ewart: To pick up on the second point, and forgetting entirely the issue of adult-only housing for the moment, as the Human Rights Code stands right now, you cannot discriminate in accommodation on the basis of age. Age is defined in the code as "an age that is 18 years or more," so you cannot discriminate. You cannot say, "I want people under 25." You cannot say, "I want people under 65." You cannot say to somebody: "You are 70. You are too old. I will not rent to you." As long as you are over 18, you cannot be discriminated against on the basis of your age, whatever it is.

This amendment, forgetting what it does for adult-only housing, says age, in section 2, the accommodation section, means an age that is less than 65. You are only protected from discrimination on the basis of an age that is less than 65 in accommodation. Today 70-year-olds are protected; with this amendment, they would not be.

Hon. Mr. Scott: Why did you not understand it when I said it, Mrs. Grier?

Mrs. Grier: I did understand it, but the explanation does not cover

my concern, which is more about the under-18s, and as much about the independent mother under 18 with a child, as it is about the family with a 15-year-old. Can that section be used to discriminate against them?

Hon. Mr. Scott: The under-18 problem is separate. We have tried to address that and have explained why we have done what we did in our proposal, but the over-65 problem is separate. I think, on reflection, nobody would want the result that your over-65 amendment might produce.

Mrs. Grier: That certainly is not my intent.

Ms. Fish: I am still a little bit confused about the over-65s. I would like to start with that and then I have some questions on the 18-and-under issue. I will direct my question to Mr. Ewart. If I understood you, you said that under the current code anyone over 65 is protected against discrimination.

Mr. Ewart: In accommodation.

Ms. Fish: In accommodation. But other acts, for example, in the funding of nonprofit senior citizen homes, not publicly owned nor publicly operated but owned and operated by nonprofit organizations, are enabled to set a criterion that would discriminate against people younger than 65. Is there anything in either the package put forward by the Attorney General or the amendment Mrs. Grier has put forward that would impede the opportunities for that kind of affirmative funding?

Mr. Ewart: The code, because of sections 13 and 14, permits discrimination in favour of people over 65. You can say, "We will set this nousing aside for them," under section 14. Under section 13, you could probably pick an age a little lower if you wanted to. But we are talking about the opposite of that--not discrimination in favour of the elderly, but discrimination against them. It is the discrimination against them that would lose protection if the amendment carried.

Ms. Fish: I agree that there should not be discrimination against. I simply want to ensure it is still possible to have places such as the Mon Sheong Home for the aged that are a positive, affirmative step. I want to ensure that will be the case, even though some could argue those very same nonprofit residences represent negative discrimination against those under 65. It is a matter of how one phrases it after all, is it not?

5 p.m.

Mr. Ewart: It is the whole affirmative action, reverse discrimination thing, but if it fits within an affirmative action program, you can say "only people over this age."

Ms. Fish: As long as that is protected, I understand that. On the basis of that, I would not be supportive of Mrs. Grier's amendment, which I understand to be removing that opportunity, which would be a problem.

On the under-18 issue, I share Ms. Gigantes's concern for the single mother under 18, but to be honest, that is not the problem that involved me in this issue. The problem that got me to this issue was the question of families with children, where the principal occupant, the one paying rent, the one signing the lease, was over 18 and the problem was that there were children under 18 in the household. I am extremely concerned that we move in a

direction of ensuring that households that have children under 18 not be discriminated against. Can I understand whether that is--

Hon. Mr. Scott: The under-18 thing is not focused on women with children.

Ms. Fish: A squirrel just came in. Join the rest of us.

Hon. Mr. Scott: If it has anything useful to add, there is no reason to exclude it.

The important thing to recognize is that the under-18 thing does not focus on an under-18 woman with a child. That is simply an example.

Ms. Fish: I realize that.

Hon. Mr. Scott: It gives the right to be treated equally in terms, for example, of accommodation to everybody of any age, so that a 12-year-old boy applying for an apartment could not be discriminated against on account of his age. You could say, "I have heard that you are very noisy and we are going to exclude you on the grounds of noisiness," as you can exclude a 30-year-old on the grounds of noisiness. They could not discriminate against him because he was a 12-year-old boy or a 16-year-old girl. That is what lowering the age, as proposed, does. The question for the committee is whether it wants to allow, what for the moment I call "juveniles," to have access in that sense.

Ms. Fish: I may not be very clear here, so I will try again. If we leave age 18 in place, as the amendment which you tabled would, are we creating a situation where the family with children under 18 can be denied housing on the basis of having children under 18 in the family?

Hon. Mr. Scott: The present situation, as I understand it, is that a landlord of a building can say to any person under or over 18, "I will not rent my apartment if you will not sign a lease."

Ms. Gigantes: He is in.

Ms. Fish: Leave him.

Hon. Mr. Scott: This is the chairman's business. You go to the trouble to elect a chairman and he cannot get the--

Mr. Polsinelli: You cannot keep the squirrels out.

Hon. Mr. Scott: The problem, as I understand it, is that at present a landlord of a building is entitled to say to anybody who comes to him, "I want you to sign a lease that will be enforceable at law, because I am going to evict you if you breach the terms of the lease," or, "I want some guarantee of payment that a lease will provide," or, "I want a guaranteed term." He can say that to a person who is 30 or to a person who is 15. The problem is that a person who has not achieved his or her majority may not be able to sign an enforceable lease.

Ms. Fish: Right.

Hon. Mr. Scott: If you are concerned that people who are under 18 who have a family, for example, should be able to get an apartment without the requirement of a lease, which I think is what we want, or what we are

directing ourselves to, what you want to do is amend the Landlord and Tenant Act and say it will be against the law for landlords to require a lease from women under 18 who have children. In policy terms, that might be a perfectly appropriate response.

Ms. Fish: In fact, I am trying not to deal with that issue. I am asking a question that is on the other side entirely. I am asking whether maintaining age 18, because of the problems you cited, where the person younger than 18 would be the person signing the lease, would have an effect of permitting a landlord to deny a family, where those signing the lease are over 18, from moving in if they have children under 18 as part of the household. That is the question I am trying to ask.

Hon. Mr. Scott: I think the answer to that is no, it would not have that effect.

Ms. Fish: I am sorry that I seem to take a lot of time in asking it, but I am particularly concerned about it and I did say that, while I fear--

Hon. Mr. Scott: I do not think the fear you have will be realized.

Ms. Fish: All right. I will speak further to that question a little later on. My last question is on the matter of those who might be under 18 and, in effect, be the heads of households. They would potentially be asking for a lease or wanting to enter into a lease arrangement. Were you indicating that it was your intention to review the various pieces of legislation that deal with it and to come forward with something?

Hon. Mr. Scott: Yes. Let me say it is before the Minister of Housing (Mr. Curling), but the Minister of Housing has had concerns expressed to him that relate primarily to public housing, about the requirement of public housing that leases be executed before people are admitted to public housing. Representations have been made to him, but in the case of young mothers under 18 with children, that requirement should be waived. I understand he is considering that.

Ms. Fish: But neither he nor you are looking more broadly at the question within the rental market?

Hon. Mr. Scott: Frankly, I am not aware that anybody in the government is. The Landlord and Tenant Act is within the Attorney General's ministry and we are not at present looking at a provision that would make it against the law to require a lease. I will be prepared to look at that if you would like me to do so.

Ms. Fish: I was just trying to understand what the undertaking was or what explanation you were giving about things that were being looked at.

Hon. Mr. Scott: I am not giving an undertaking. I am simply telling you that I know the Minister of Housing has received representations that in respect of public housing it should not be a requirement that a minor, especially with children, should be required to sign a lease before that person goes on the housing list. There are a substantial number of young mothers in Metropolitan Toronto under 18 who have one or more children and who have no steady means of support. I think it is important that they be considered for Ontario housing projects. The minister is being asked to--

[Interruption.]

Mr. Chairman: That reference--

Hon. Mr. Scott: In a minority government one has to be very careful. I did not mean anything by that.

Mr. Chairman: Remember what happened to Dave Winfield and the seagull? It is like the squirrel, especially during a discourse on the Human Rights Code.

Hon. Mr. Scott: The minister has that point before him for consideration.

Mr. O'Connor: Putting the matter in its simplest terms, and I am a simple fellow trying to understand, is it fair or correct to say that the effect of the government's two amendments is effectively to ban adult-only buildings for everybody except those over 65 where they will still be allowed, because of the effect of sections 13 and 14?

Hon. Mr. Scott: Yes.

Mr. O'Connor: Mr. Ewart shook his head in the negative.

Hon. Mr. Scott: He changed his mind and shook it in the positive after I spoke.

Mr. Chairman: For the record, which way did you shake, sir?

Mr. Ewart: I agreed with the Attorney General.

5:10 p.m.

Mr. Chairman: That is a wise thing to do.

Ms. Gigantes: I think we all realize that we have a problem here. We have a problem in two senses. One is that we want to protect the right of the government to set up discriminatory housing programs which provide housing for people who are 65 and older. I think we all want to see that. I will come back to that one in a second.

We have another problem, which is that there are a lot of women who are heads of households, with children, maybe more than one child, who cannot sign a lease. They cannot get into public housing as things stand. The minister says, "We will be looking at that problem."

The fact is, they cannot sign a lease in private rental accommodation. The minister's answer to that is, "You are asking me to say that a landlord has to be told that he cannot require a lease of a woman in such a position." I do not think that is what we are asking at all. There is another way of going at that problem, which is to say that certain people younger than 18 who have taken on certain responsibilities, which are legal, among other things--Oh, for God's sake.

Hon. Mr. Scott: "Some hon. members: Oh, for God's sake." You make your point, Ms. Gigantes.

Ms. Gigantes: I request that there be an attempt made to remove this squirrel. I do not like squirrels.

Hon. Mr. Scott: It is coming right over at you.

Mr. Warner: Where the hell is the squirrel?

Mr. Chairman: Would the committee like to adjourn for five minutes and we will see whether we can get an attendant in to capture the squirrel?

Ms. Gigantes: I am on the list, Mr. Chairman. I am speaking.

Hon. Mr. Scott: Is it the clerk's job?

Mr. Chairman: It is the clerk's job.

Interjection: It is the chairman's job.

The committee recessed at 5:12 p.m.

5:19 p.m.

Mr. Chairman: Members of the committee, we are ready to get started again. I apologize for the disruption. The chair was attempting to cool down the room and opened the window. Then we had an uninvited guest who participated in our meeting for a short period of time. Ms. Gigantes had the floor and she had just completed saying "Oh, my God," as she stood up. She may now, if she has her train of thought recaptured, proceed to present her case.

Ms. Gigantes: Thank you for indulging my phobia of squirrels. As I was saying, I am concerned that the matter of households headed by women under age 18 or, indeed, men under age 18 be addressed in a way that deals with the private market. I hope the minister will take that message forward. I do not think we have to address it by removing the right of landlords to leases. There are other things we can do. We certainly place all kinds of other legal responsibilities on people of that age if they have families. I hope we might allow them to sign leases if that is their situation.

One thought that I had about the question of over-65s, is I feel satisfied that removing section 24 right now will address the problem. If there continues to be a problem, we will have to look at it again. But I think the word will go out to landlords in Ontario that adult-only buildings are not accepted any more and they are not going to fool around much with it.

I would like to suggest that we keep a look out in a tight rental market for landlords who decide that they are going to start running private senior citizens' apartment buildings. It seems to me that landlords in a tight market have been very inventive about the ways they get around all the legislation we can design to try to ensure equity and some kind of financial fairness in the market. We should keep an eye on that; if we start seeing private senior citizens' buildings springing up in the private market, then we had better look at this legislation again.

Mr. Warner: I do not think the key to understanding what is being proposed is the concept of a lease. As I understand the Landlord and Tenant Act, the lease is less significant today than it was prior to the act being introduced. There are sufficient protections afforded within that act that a tenant has no more protection by way of a lease than by way of not having a lease but relying on the Landlord and Tenant Act.

The question then becomes one of age discrimination, not whether or not someone has the right to enter into a legal contract, i.e. a lease, and because you cannot--that is, you are not 18--therefore you cannot sign the lease, and you can be denied accommodation. You have, in practical terms, a 17-year-old single parent mom who is attempting to secure housing and the landlord can say, "You cannot sign the lease; you are not 18." That is really misleading in that the lease is not of that significance.

The landlord can now rely instead on the age 18, as specified in section 9 of the Human Rights Code, and deny the person access. My guess would be that you should remove that restriction. The Attorney General stated the case of a 12-year-old, I must presume in his riding, who is seeking accommodation. My guess would be that if you remove the age 18 restriction, the 12-year-old could still be denied accommodation on other grounds, primarily financial. I will assume that the landlord would have to be convinced that a 12-year-old is able to pay the rent.

I mention it because the response is probably as frivolous as the example. I would suggest that, in practical terms, we do not have 12-year-olds out looking for accommodation on their own; but we do have 16-year olds, and 16-year-olds have a severe problem. The suggestion is that we remove that age 18 as specified in section 9 of the Human Rights Code. That is a helpful thing to do, and I suggest that the committee not key in on the lease as being the stumbling block, because I do not believe it is.

Mr. Chairman: Before I move to Mr. Partington, who wants to comment on this, for purposes of keeping us on track with respect to the amendments, Mrs. Grier is not officially a member of this committee; therefore one of her colleagues will have to move her amendment officially. I would ask her to straighten that out.

Mr. Warner: These were not already placed, were they?

Mrs. Grier: I notified the chairman they were going to be placed, but they have not been officially placed.

Mr. Chairman: When you do place them then, would Mr. Warner or Ms. Gigantes move your amendments?

Mr. Partington: With respect to the amendment being proposed by Mrs. Grier: Certainly the government amendment answers our real concern, and that is eliminating adults-only buildings. Introducing the issue with respect to those under 18 is complex; perhaps it should be looked into by the minister. The law with respect to people under the age of 18 was originally introduced for the protection of infants, not for their harm. Just as you point out there may be situations where they may be discriminated against, there can also be very many cases where permitting an infant to enter a contract can be to his or her severe detriment. To answer the key problem, that is, to deal with the adults-only buildings, we should be proceeding with the government amendment. The issue raised by Mrs. Grier deserves attention and a solution, but it only makes it difficult to deal with the main issue, the adults-only buildings, at this stage.

Mr. Chairman: Mr. O'Connor moved that the bill be amended by adding thereto the following section:

"17a(1) Subsection 19(2) of the Human Rights Code, 1981, being chapter 53, is amended by inserting at the beginning 'subject to subsection (2a).'

"(2) Section 19 of the said act is amended by adding thereto the following subsection:

"(2a) Subsection (2) applies only where persons of both sexes are provided with equal access to services and facilities, including funding, in proportion to their demand, to enable them to be members of an athletic organization or to participate in an athletic activity."

Ms. Gigantes: What have we dealt with?

Mr. Chairman: We are not dealing with any of the amendments until we have all of them placed; then we will go back to the beginning and deal with them individually. I am proceeding in that fashion because some of the amendments, such as Mrs. Grier's proposed amendment, amend the government's proposals. In order to keep them in somewhat of an understandable order, I felt that would be a better way to proceed. If you like, you can speak to Mr. O'Connor's amendment now, but we will actually go back to the beginning and go through them all.

Ms. Gigantes: Before we do that, in terms of process, Mr. O'Connor indicated earlier that he would prefer more time to deal with the amendments that would treat the sections of the code dealing with access for handicapped people. I am quite prepared to grant more time on that. If that is agreeable to the minister, it might be useful to have a few more discussions before we get to voting.

Mr. Chairman: My intentions were that as we came to the numbers identified earlier in Mr. O'Connor's remarks we would stand those down, with the concurrence of the committee, because they require the tabling of further amendments from Mr. O'Connor. Going back to number one, we will deal with all those the committee agrees to deal with; we will stand the others down and bring them back at a later point.

5:30 p.m.

Hon. Mr. Scott: That is fine.

Mr. O'Connor: Do you wish, at this point, to place any more amendments and then go back and deal with them in order or shall I make my comments with respect to my amendment?

Mr. Chairman: Actually, either way is fine with the chair. You can do it now if you would like but as I say, we are going to go back and we will deal with that in order.

Mr. O'Connor: I will be a few minutes. I will be perhaps 10 or 15 minutes; that is why I put it to the committee.

Mr. Chairman: I do not think there is any disagreement on that. You may proceed.

Mr. O'Connor: I brought an amendment with regard to subsection 19(2), which I hope the committee will seriously consider and ultimately implement.

We heard a multiple number of groups on the question of subsection 19(2) of the Human Rights Code. While I hesitate to categorize the various groups into two separate approaches to the issue, it is fair to say that generally

there were two sides to this issue. One is represented by the sports groups involved, which would be affected by subsection 19(2), or its deletion, as the case may be.

In this regard, it should be noted that the majority of the groups that we heard from that are involved in the sports community--the front line troops, so to speak, the ones most affected by amendments or deletion of this section--were the women's sport organization in this province. Not only did we hear from them orally, by our committee, but we also received literally dozens of briefs from various sports governing groups or sports governing bodies; they call themselves SGBs. In addition, the committee members will be aware that our party sponsored a conference last fall in Toronto where we had appear before us some 76 various sports governing bodies, the vast majority of which represented women's sports. They were quite vocal and quite adamant in their point of view with respect to subsection 19(2).

Second, the committee heard another very distinct group of organizations on this point that were concerned primarily with the principle of equality, a principle, of course, with which none of us can argue. However, it should be pointed out with regard to this category of presenter that, except for very few them, they were not sports groups. They were generally interested in the overall principle of equality between the sexes.

We must avoid simplistic solutions to the problems put to us by these various groups. As we know, the courts have struck down subsection 19(2). In our opinion, they well should have. Subsection 19(2), I would submit, is a simplistic solution to a complex problem. It simply says, "no amateur female athletes may participate on male teams," and similarly, "no males may participate on female teams." It is a simplistic prohibition to that problem.

Similarly, I would argue, the total deleting of subsection 19(2), as is proposed by the government amendment and as has been effectively carried out by the courts, is an overly simplistic solution to this complex problem. To delete it entirely would then mean that there can be open ended transmigration of female athletes to male teams and male athletes to female teams--something with which virtually none of the sports groups from which we heard would agree.

The groups outlined to us a variety of concerns with regard to the effect of deleting subsection 19(2). They told us about the concerns they had because of what might be the effect of contact between the sexes in the various contact sports about which they told us--hockey, baseball, basketball and other sports. They told us that the effect of 19(2) would be counterproductive to their sports in several areas. In terms of funding, they felt that if it were open to males to come to their teams, or were open for the better females in their organizations to play on the boys' teams, very quickly funding for particular women's sports would begin to dry up.

They told us about the problems that would exist with regard to the myriad volunteers who coach their teams, run their leagues, referee the games and devote much of their spare time in the evenings and on the weekends to the carrying on of amateur sports in this province. If there were the kind of transmigration that would be permitted with the deletion of subsection 19(2), they would very quickly lose a significant number of volunteers in their organizations.

They told us of the practical effects in other areas where such an amendment has occurred. They pointed as an example to Quebec, where in 1978 there were several thousand young girls playing hockey in girls' hockey

leagues. The effect of deleting a section similar to 19(2) was that at present there are nine teams encompassing 400 girls playing girls' hockey in Quebec, whereas in Ontario we have some 250 teams of girls playing hockey, encompassing 3,500 participants.

They advised us of the potential inability of our teams to compete interprovincially and internationally should we permit girls to play on boys' teams and boys to play on girls' teams. There are rules governing international sports bodies that would prevent teams from competing outside their own leagues in this province.

Having heard these arguments almost unanimously from the sports governing bodies, I wonder how we as legislators can have the arrogance, if I can put it that way, to say to these groups: "Look, we know you think you are going to have this problem, but you do not know what you are talking about. When you tell us you are not going to be able to compete internationally, you do not know what you are talking about. When you tell us there is going to be a negative effect on your funding, you do not know what you are talking about. When you say there is going to be a negative effect on your volunteers or that many of your girls are going to drop out because they do not want to have to compete against boys on their teams, you do not know what you are talking about."

Where do we get off ignoring the requests of these groups in this regard and by saying to them in effect: "There is a greater good to be achieved in all of this. We are going to delete it. We know better. We know how you can best govern your organization"?

I would have some sympathy for the position of the government if we heard these things from only the male organizations that appeared before us. Yet we heard overwhelmingly from dozens of female sports groups, which presumably have the best interest of their participants, coaches, funding and services at heart. They told us they do not want this. I wonder whether we should not be listening to what is a significant constituency in Ontario.

If the effect is to discourage funding, volunteers and players, who then benefits from such a deletion? Can we not place some faith in the sports governing bodies themselves that are in the front line of this issue, rather than faith in the theorists who, albeit well-intentioned--there is no question they are well-intentioned and sincere in their belief that it is in the best interests of the women's movement that this amendment be brought about--are, frankly, not able to tell us the practicalities, as are the sports governing groups?

5:40 p.m.

I would have more faith in the government in its attempt in this regard if I were able to see it had developed and put before us some programs to enhance female participation. If there were any real plan, if the government had any kind of concrete goals which it indicated should be achieved for the women's sports movement by a certain date, if there were some funding announced, then perhaps we would have something upon which we could hang our hat in order to say that they are moving in the right direction; and that even though a gap is going to be created temporarily, we will be placing affirmative action programs in the near future which will satisfy the fears and difficulties that the sports groups, and now I, are suggesting might occur.

Where is a statement of funding to be made available to the sports

governing groups, or the statement that we are going to better assist women's amateur athletic sports in the school system? Where is the statement that there are going to be better facilities, better coaching and money made available for these purposes?

Where is the statement of the long-term goals of this government with respect to women in sports? Is it the intention, for instance in the hockey area, that there ultimately will be women playing in the National Hockey League or at the Olympics, or is it to foster women in hockey at the recreational level only? We heard nothing of this along the way. It is a simplistic approach for the sake of satisfying a theoretical need as established and put to us by the women's movement.

Where is the comment or the government policy with respect to the very comprehensive program and study done by Mr. Sopinka in his task force report of last year, whereby he recommended that there be nondiscrimination between girls and boys up to age 12, but thereafter there should be some form of discrimination in order to satisfy the needs I have just expressed?

I suggest the amendment I have put is a compromise which satisfies some of the concerns expressed by these groups. It would permit the discrimination that now exists in subsection 19(2) in circumstances where there are comparable services and facilities, including funding, available to a women's sports group. Where there are not and where the case can be made that there are not in a particular area or town or type of sport or league, there would be the permission for girls to play on teams of their choice in the boys' area.

I argue strongly that the effect of such an amendment would be to force the sports governing bodies into providing the services, funding and facilities for the female teams. They have told us they do not want this kind of integration. If they do not want it, they will move very quickly towards providing equal accommodation, facilities and funding to the female side of their sport. It would act as a positive encouragement to the women's athletic movement.

Without positive, affirmative action programs, goals, guidelines, funding, etc., the elimination of subsection 19(2), cold, as suggested by the government, is moving too far too quickly and, in my opinion, will have a counterproductive effect on the women's sports movement in this province.

Hon. Mr. Scott: It might be appropriate to say the government does not accept the amendment. It could be said the amendment is submitted without any principle whatever. I do not propose to approach it that way, but I think in reality this is an attempt to repeal the decision of the Court of Appeal.

When this amendment was proposed by the government, it was exclusively on the basis that subsection 19(2), the only subsection of its type left in the country, prohibited discrimination under section 15 of the charter. The Conservatives decided to mount a campaign against that, no doubt some would say because of principle, no doubt because they thought it was a good opportunity to get a whole lot of groups on side. It was said that what this charter amendment did was mandate integration in sports.

When I had the occasion to meet in my office almost all the people who made submissions here because I could not be at the committee hearings, they said, "We are opposed to integration in sports." I said, "Where did you ever get the idea that the repeal of subsection 19(2) imposed integration in sports?" They said, "We were told all that at a meeting the Conservatives put

on at Cambridge." I thought it was in the town of Cambridge; it turned out it was--

Mr. O'Connor: Mr. Chairman, on a point of privilege: I really object to that remark

Hon. Mr. Scott: No. I will give you the name--

Mr. O'Connor: On a point of privilege, I have precedence over the current speaker and I simply point out that the meeting to which the Attorney General is referring occurred in Toronto. That was not the point of privilege. I was there for the entire meeting, and we did not in any way encourage or mislead the sports groups. We simply sat and listened. They came to us with their concerns and in no way, shape or form did we suggest to them the effect the Attorney General suggested.

I submit they have quite correctly interpreted that with the elimination of subsection 19(2), we now have Justine Blainey playing boys' hockey. I am not against Justine Blainey. She is a great hockey player and she should have the right to play hockey. However, the effect as they have interpreted it is starting to occur, and that is my point.

Hon. Mr. Scott: I withdraw from that point because I was not at the meeting, but certainly all those people came away from the meeting to my office believing that the repeal of subsection 19(2) mandated integrated sports because it was in breach of section 15 of the Charter of Rights and, indeed, some members of the Conservative caucus said so.

Mr. O'Connor: It permits it. It does not mandate it.

Hon. Mr. Scott: It permits it. The Court of Appeal has made it perfectly plain that it does not permit integrated sports. If you refer to page 50 of the Honourable Mr. Justice Dubin's decision for the majority, you will see that set out. Read as a whole, his decision not only makes subsection 19(2) unconstitutional, which was what we said from the beginning, but it makes the amendment that my friend proposes unconstitutional as well.

Mr. Justice Dubin says you can have certain qualifications and he gives examples. He gives examples of the British act that permit discrimination on the basis of strength or skill. He makes reference to the Canadian Human Rights Code which permits discrimination on the basis of public decency. He makes it perfectly plain that the type of discrimination contemplated here by the amendment, which is separate but equal facilities based on funding, is simply an impermissible discrimination under the charter. The effect of the amendment is to repeal what the Court of Appeal said and to institute a type of discrimination that is every bit as invalid under the charter.

No one will go around any more, please, saying that we are mandating or permitting integrated sports, because the court has said the proposal does not do that. I hope my friends will, in candour, recognize that anybody who says that any more is talking through his hat. It does not mandate or permit integrated sports for the reasons that we gave when we opened it to the committee and for the reason Mr. Justice Dubin gives for the majority.

The other problem is that this amendment creates a number of dilemmas, altogether apart from creating a form of discrimination which makes it equally as open to attack as subsection 19(2) itself. For example, it does not deal with the language that it presents. What does "access to service and

facilities" mean? Does that include participation? What does "in proportion to their demand" mean?

This is simply, if I may respectfully say so, an effort to get off the hook you got on when you said, "We are going to support subsection 19(2), come hell or high water," which was your position two months ago. It is fascinating to hear you say now that you are in favour of the Court of Appeal position. You fought like navvies to take the opposite position. You are trying essentially to get off the hook that the Court of Appeal decision has put you on. The way you are going to do that is to agree that it can do what it did and to wreck the type of discrimination that the Court has plainly indicated would fail in precisely the same way. We simply could not support it.

Mr. O'Connor: I want to reply to that briefly and take exception to some of what the Attorney General has said. We are entitled to interpret the effect of the Court of Appeal decision, as is he. In my opinion and in the opinion of many people, the effect of eliminating subsection 19(2) altogether will be to permit the transmigration of either sex on to teams of the other sex.

Hon. Mr. Scott: Is Mr. Justice Dubin wrong then?

5:50 p.m.

Mr. O'Connor: No. I am just saying that as you have taken the liberty of interpreting his words in that respect, so have I. I am simply saying that with regard to the Justine Blainey case, there is the first step in this situation. Second, he wonders where the definition of the words in the section are. He knows very well, with regard to all statutes that we pass, that they are subject to interpretation by the courts or, in this case, by the Human Rights Commission. They have a plain meaning on their face. I know what they mean and I think he knows what they mean. To suggest that we should define each word somewhere else in the act is simply not how we draft legislation.

Hon. Mr. Scott: The road to Damascus is busier than Highway 401.

Ms. Gigantes: After due deliberation, my colleague and I are of one mind, I think, that we will not choose to support this amendment. The arguments that have been advanced by Mr. O'Connor are arguments that we have heard before. I do not think any of us should find it surprising that we heard them. It is one of the remarkable features of humanity gathered in groups for any group purpose that if somebody proposes to change its operating structure, those groups voluntarily gathered for a beneficent purpose are going to say: "No way; you are going to ruin everything we have worked for. You are going to upset the whole apple cart; you are going to take out the underpinnings of all our activity. We will never be able to do what we have done in the past in the same kind of wonderful way." That is a very natural human reaction to proposals to change. It is particularly true in organizations where volunteer effort has been the mainstay for years.

I know that, coming from a volunteer organization. Any and all of us, from our experience with various kinds of volunteer organizations, know that. The Bible says, "Where two or three are gathered together in the name of God, there is a church." Where two or three are gathered together in the name of public service, there is a bureaucracy. Where two or three are gathered together in the name of a volunteer activity, you have got something worse than a bureaucracy because they are not even getting paid. You can not fire

them, and if you give them any suggestions for change you run into a tiger, a real tiger.

I appreciate the people who have worked hard in sports organizations and have with enormous effort built up high levels of quality sports opportunities for both boys and girls in Ontario--not satisfactory levels for girls and perhaps not for all boys--but certainly have done an enormous amount towards promoting the ability of young people and older people in Ontario to get involved in sports in an organized fashion. I appreciate that they do not want to be told things are going to operate on a different basis.

One of the things that people who came before this committee, who did represent sports organizations, who did represent sports interests and who supported the amendment said time and again:--and some of those who were fearful of the change to subsection 19(2)--"We have been totally preoccupied in this discussion with hockey." I believe that is true. The examples used now by Mr. O'Connor deal again with hockey. We are told again, what I believe not to be the case, which is that Quebec has suffered compared to Ontario and the reason for that is that Quebec was not allowed to discriminate in its sports associations and build up girls' hockey teams.

We have had evidence presented before this committee by people who live in Alberta that the level of participation of Alberta girls in organized hockey is the same level on a proportionate population basis as in Ontario. You have to accept those facts. Alberta just does not have this kind of discrimination clause. Historically, the Quebec situation has different explanations. People familiar with the Quebec situation will tell you that. We have heard again the talk about open-ended transmigration. It certainly is a fearful sounding proposition.

Mr. Warner: Yes, it sounds like a disease.

Ms. Gigantes: Yes. It makes you want to call out the health inspector. However, that is not what we are talking about here. The code, in terms of its ability to protect girls' teams from invasion by huge boys, still has that ability. Subsection 13(1) remains. Girls' teams can be protected by an enlightened human rights commission from that kind of invasion.

I think we are missing the point when we talk about sports associations. The Human Rights Code is not here to protect organizations. In the final analysis, it is here to protect the rights of individuals. I think Mr. O'Connor will be very sympathetic to that point of view when we get to a discussion of the rights of handicapped people in the code.

One of the reasons both he and I have asked for a longer time to consider the government's proposed amendments dealing with the rights of handicapped people is that we share the concern that handicapped people not be looked at as a group only. We are sure that, when the rights of a handicapped person are being considered under our Human Rights Code, that single person, and his or her rights, will be taken into account in a way we feel is going to protect human rights effectively.

What we have to look to in the discussion of subsection 19(2) is not the sports associations, not those very well meaning volunteers--

Mr. O'Connor: Who are individuals.

Ms. Gigantes: --who have worked hard and who I believe will be able

to work hard and happily in a slightly reorganized world we are contemplating in the removal of 19(2). We have to look to individuals.

We know Wayne Gretzky went through this and we know one young woman after another has gone through it in hockey and other sports in Ontario. We have to look at a situation where, no matter what else, a young woman is going to be able to say: "If I play at a certain level of sport, I should be able to play at that level. Do not talk to me about equal funding and equal access to services and facilities."

We are talking about the level of play and the individual's right to decide to attempt to reach a certain level of play. It may be a girls' sport or a boys' sport in an organized sense, but that right has to be established and the impediment to it removed. The proposed amendment does not essentially address that problem, and I am not going to support it.

Mr. Warner: I will try to be brief on this. I am surprised Mr. O'Connor missed what I think was quite evident from the presentations we have had before us. From all the groups and individuals who came before the committee, what impressed me, among other things, was the dynamic spirit of the various organizations across this province in attempting to provide organized activities for young people on a volunteer basis.

Some of the organizations are small, some are huge, but regardless of size, throughout the province in small and large communities, we have a veritable army of volunteers out there doing a super job of providing recreational activities for our young people. They are dynamic organizations intelligently and sensitively run. They are protecting the status quo they have had for decades, and that is very understandable.

6 p.m.

What seemed so apparent to me is that when this discriminatory aspect is removed, all those dynamic organizations will adjust to a different situation. They are entirely capable of that, and it will happen. Some folks seem to see the opposite, the flip side, that somehow the world is going to fall apart. If suddenly girls have an equal opportunity to try out for a team, the whole world is going to disintegrate. I think the opposite will happen. When organizations know they cannot discriminate, they will adjust.

You will recall, through the hearings, that in large measure it was not the coaches who were at fault. Coaches of teams were quite prepared to accept a girl on a boys' team because they recognized that skill level they wanted. It was the organization that stultified the whole system. In many respects, the coaches are already there in terms of the thinking required. The adjustments will happen. The world will continue to function but in a little better fashion because, for the first time, girls will actually have an equal opportunity to try out and their skill will determine whether they will make the team. For me, that is the bottom line. To say anything else is not fair.

One last thing: I share the concern expressed by Mr. O'Connor about second-guessing legislation. I have always taken the position that the Legislature creates legislation, and then if the courts want to second-guess what we have done, fine. That is proper. My personal opinion is not worth very much in this, I suppose, but since we know what was struck down and why, to me it is not a great leap to see that what is being proposed here would similarly be struck down.

None the less, it certainly is our right as legislators to put that forward even if we think it is going to be struck down. There is nothing wrong in us doing it, although common sense might tell us it is like hitting our heads against a brick wall. Sooner or later, you may move some of the bricks; I do not know. To me, it would be struck down, but I am not the court.

The last thing includes the trigger words in there that should cause us some concern. It does me. They are "including funding." In other words, if you can deny the funding, then you will deny the equal opportunity. That would be a nifty way to get out of any obligation and you could continue to discriminate in communities.

Mr. O'Connor: No, quite the reverse. You misinterpret that. If the funding is not equal, then there would be the permission for integration. It is only where there is equality in funding, in services, in coaching and in everything else that you would not be permitted the integration. There would not be a need for the integration then, because the girls would have their own organizations with equal amounts of money, equal amounts of facilities and equal numbers of coaches. They would not want or need to play on the boys' teams.

Ms. Gigantes: How do you know?

Mr. O'Connor: Where there is not the funding, then they would be permitted the integration.

Mr. Warner: Is that not interesting?

Mr. O'Connor: That is the point. You do not even understand the amendment and you are talking against it.

Mr. Warner: Right. What I understand now is that you would not support Justine Blainey's situation.

Interjections.

Mr. Chairman: One speaker at a time.

Mr. Warner: That is the root cause of the whole conundrum.

Hon. Mr. Scott: Speaking from where I stand, if there are 100 boys in the town and one girl, as long as the funding is 100 to one, then it is in proportion and there can be discrimination.

May I make one observation before Mr. Partington commits himself? If the logic does not compel the Conservative caucus, as it may not, have regard to this: The signal we send to young men and young women is very important. If the logic does not compel you, may I remind you that the Conservative Party is a great party capable of much progressive tradition in this province.

If you cannot do it for yourselves, do it for Bennett, Loughheed, Devine, Buchanan, Hatfield, Mulroney and the premiers, none of whom ever required a prohibition such as this in any statute. Do it for John Robarts, who did not require it. This section was not in the act until Bill Davis got his majority in 1981. Think of those great Conservative leaders and what they thought of equality. They did not require this kind of game to be played, and that is all to their credit.

Mr. Chairman: Now that the minister has said that, I will move on to Mr. Partington.

Mr. Partington: I support the amendment proposed by my colleague Mr. O'Connor. I know that does not come as a great surprise to anybody here.

Hon. Mr. Scott: I am disappointed.

Mr. Partington: We heard two things loud and clear during these proceedings. One was a desire to provide more facilities for girls and women in sport so they could participate fully in the athletics of choice. The other was that there should be a form of discrimination, I presume in the form of an affirmative position, so women's sport can grow and prosper, as many groups that came before us said is happening in Ontario.

Where the facilities are not available, discriminatory action is unfair. For that reason, following the court decision, we support the elimination of subsection 19(2). However, Mr. O'Connor's proposed amendment seems to answer the concerns of everyone. It states discrimination is permissible where equal facilities are available. Where they are, both athletic groups can continue to grow and to prosper as they should, with particularly the young groups enjoying their athletic endeavours.

We heard from the people who are directly involved in sports. They are the people who are involved at the ground level. They know what happens, and they say, "Keep that protection for us."

Mr. Warner: Some.

Mr. Partington: All, representing millions. Very few were opposed.

Mr. Warner: How many?

Mr. Partington: Millions. We heard from the school federation athletic groups, minor softball, minor hockey, and on and on.

We also heard an opinion from Ed Ratushny, a professor in the faculty of law of the University of Ottawa. Not only does he think subsection 19(2) is not constitutionally correct, but also he thinks an amendment in the spirit Mr. O'Connor has proposed would be constitutional and would provide the support necessary to allow athletics at the amateur level to grow and prosper for both men and women. Mr. O'Connor has made this proposal in that spirit. I think it answers the issue and we should all vote in favour of it.

Hon. Mr. Scott: You must owe him something.

Mr. O'Connor: The minister is imputing motives again.

Hon. Mr. Scott: I should not. I expected O'Connor; I am disappointed in Partington. You have Fish and Villeneuve yet.

Ms. Fish: Fish now; you are about to hear from Fish.

I find this extremely difficult. Perhaps at some point in all our lives we take some decisions based on our own personal experiences, and this is one where the unbelievable lack of facilities for young girls and young women in athletics in my era dramatically influences me.

I feel very strongly we should be encouraging each of our young people to achieve to the greatest possible potential. We should focus on the opportunities--if I recall the submissions correctly, the phrase that was so often used was the elite athlete--to be able to compete at the best possible level. That is terribly important, and competing within that category or more or less at that level--I do not want to be caught in a definition of what constitutes an elite athlete, because I do not know the language well enough to be able to define it, except I understand that to be at a very high level of competition. Clearly, the criterion is merit.

6:10 p.m.

What struck me so much in the various submissions and also in reflecting on the way the times have changed in the more than 30 years since I was going through the school system and worrying about--

Interjection.

Ms. Fish: My nonmathematical colleague suggests 20 years. There is a problem at the other end, in that one cannot become an elite athlete and a champion unless one starts at a beginner's level.

We must ensure a recognition of not only the opportunities but also what I call the real opportunities: the encouragement that deals with the facility, the volunteers, the atmosphere and the kind of personal attention and care that is important for all our young people to develop, whether it is a team sport, whether it is an individual spirit, whether it is contact or noncontact or whatever it is that is being developed.

The one thing I kept coming back to is, how do we get into a system? How do we ensure that we are encouraging more and more actual elite athletes, but also just more and more young people, whether they are ever going to be elite athletes or not, to become active in athletics, and ensure that the strides that have been made--and I treat the hard battles fought to expand the opportunities for girls and women as strides--do not somehow get washed out, for whatever reason?

I am firmly of the view the funding has not been sufficient, the facilities have been woefully inadequate, the involvement of volunteers has been dramatically different in what is available for young boys and young men and what is available for girls and young women, and I am concerned about that.

When I look at this amendment that has been put forward, I read it as grounds for an exemption; not as requiring separation, but as grounds for an exemption. As I understood it, it seems to be a possible way, on the one hand, to bring together a spur towards the development of the programs and the facilities for beginners and novices, for the nonelite athlete, and on the other hand, to afford the circumstances--and here I am not sure whether I understood my colleague Mr. O'Connor correctly, but I certainly disagree--to afford very clear opportunities for the elite athlete, as I understand Justine Blainey to be, to be able to argue that part of what she is doing is wanting to be able to play, based on her level of skill.

I do not know whether what we are arguing is that somehow that requires an amendment to what is being put forward. I guess the conundrum is that I disagree with the worry that has been expressed by many of those who have been active in sports for young girls and women that the floodgates will open, that the boys and young men will overcome them and that they will not be able to argue effectively for funding or to get it.

I am not at all persuaded that is going to happen, but I listen very carefully to their very real worries and consider the fact that they were the people who were on the front lines of the fight to carve out the areas for women. When I look at this amendment, it seems to me that it might be a place that would afford at least an interim buffer for some of their concerns, if the focus of their concerns was the funding and facilities and an opportunity to provide a focus that would enable some young girls and young women to compete within groups that may be, in some cases, simply for them.

It is a way of coming down and saying that my concern is that historically I do not believe there has been sufficient positive focus on the opportunities for athletics and development for the girls and young women in this province, and I am not sure how we go about getting it. One of my thoughts was that perhaps we could get it by trying to say that if there is an area--and I do not really know enough about athletics to know--where there are good, sound reasons to have a separation of the sexes, it might be because of a positive accent on the development of the girls or young women, and then it would be only on very limited grounds. It would not be simply because of almost a historic accident, which is the way I see some of the development in the pattern of primary support going to the boys and young men.

As I say, that is the way I read the amendment. That is the way I understood its intent, and I am very sympathetic to that intent, that effort to try to bring together not only the opportunities for the elite athlete, which I think are terribly important and which are based on skill, but also what happens to them before they are ever elite athletes--

Mr. Warner: The amendment still prevents Justine Blainey--

Interjection: No, it does not, not at all.

Ms. Gigantes: If there is equal funding and all that stuff, that is it. She plays at the level that there is in girls' hockey; and that is it. She does not get a crack at anything else.

Mr. Warner: Yes, Terry has made sure that Justine Blainey will not have an opportunity.

Mr. O'Connor: I take exception to that. I want to thank my colleague for her much more eloquent presentation than mine ever was.

Hon. Mr. Scott: That was a close one, was it not? For two thirds of the address, I thought you were going to oppose the amendment. Terry is lucky.

Mr. O'Connor: In any event, the point is made that if we delete subsection 19(2) cold, there is absolutely no program, there is no money, there is no incentive to assist young girls and young women in their athletic endeavours. The government has said nothing and has done absolutely nothing to assist in their programs. There will be the problems that the sports groups have anticipated.

What this amendment does is to create a positive encouragement to the various sports governing bodies to set up and to fund girls' and young women's organizations, teams, coaches and facilities. If they do not, they are going to suffer the consequences that none of them seem to want, as they indicated in their presentations to us.

With regard to Justine Blainey, she can well make the case that there

are not the services or facilities available to her because of the level at which she plays hockey. She would therefore be permitted to integrate into a boys' team. There is no intention in our amendment--

Hon. Mr. Scott: Someone could spend a long time in purgatory on the basis of the things you are saying.

Mr. O'Connor: There is no intention at all to bar the Justine Blainey's, the Abby Hoffmans or the other exceptional female athletes. The intention is a positive one: to encourage funding, coaching and facilities.

Ms. Gigantes: Mr. Chairman, may I ask you to call the vote?

Mr. Chairman: Mr. Villeneuve has been very patient and he has not had an opportunity to speak. My last hope. He has indicated an urgent need to participate in this debate, and I think I should give him that opportunity. Mr. Villeneuve has the floor, and then I will go to Ms. Gigantes.

6:20 p.m.

Mr. Villeneuve: My urgent need will not last very long. I certainly hope that Justine Blainey does make it to Junior C, Junior B and Junior A, and I hope to go and see her at Maple Leaf Gardens when she is with the Marlies. This amendment would allow her to do that.

I was referred to as the squire of the great little community of Moose Creek in the stately chamber across the way here this afternoon, and I will tell you what goes on in the great little community of Moose Creek if you will give me two minutes.

We will get away from hockey. We have some good ball players. We have two ball diamonds, and they have lights. The girls play on their diamond--or they used to play on their diamond--and the boys played on their diamond. We had some pretty good competitions. We had some excellent tournaments, all girls and all boys. This progressed or degenerated to so-called lob ball, because they integrated the teams. They do not care whether subsection 19(2) exists; they have never even heard of subsection 19(2), with all respect to the Attorney General. It is simply a matter of getting out and doing the best you can.

Some little guy would be pitching his heart out and the crowd would be saying, "Take it easy, she is a girl." Then it degenerated into lob ball. Lob ball is great, but if you are pursuing excellence in any type of sport, I do not think you will find very many scouts for the Toronto Blue Jays looking at lob ball games.

Common sense will prevail in spite of what we do in this committee. The kids out there do not really care whether subsection 19(2) stays, goes or ever lived. What will happen is that common sense will prevail. I realize we are dealing with a few exceptional female athletes, but by and large what will occur is that we will lower our calibre of sports.

Ms. Gigantes: I was just going to call the question, Mr. Chairman.

Mr. Chairman: We are not going to do that at this point unless committee wants to change what we talked about earlier. We were going to go back to the beginning and do them all in order.

Ms. Gigantes: Standing aside--

Mr. Warner: Oh, I am sorry.

Mr. Chairman: Standing aside from all. I allowed them to speak to the motion now. I do not imagine very many minds have been changed. If it is your wish we--

Mr. Warner: Do you mean everything we were amending in section 17a?

Hon. Mr. Scott: If I may make this suggestion, I am not certain we dealt with the pregnancy section and subsection 19(2). It would be a misfortune if we came back next Monday and the debate broke out again.

Mr. O'Connor: I would be willing to deal with the pregnancy subsection 19(2) and subsections 17a(6) and 17a(7), being subsections 20(3) and 20(4) of the act.

Mr. Chairman: That is fine. All right, then, you have all heard at some length the amendment placed by Mr. O'Connor--

Mr. O'Connor: Should we not deal with subsection 17a(1) first on pregnancy?

Mr. Chairman: No, subsection 17a(1) is--Ms. Grier had her proposed amendment.

Mrs. Grier: We are prepared to accept the Attorney General's assurance that the intent by repeal of subsection 20(4) is the elimination of adults-only apartments. If the problems that have been indicated might arise do arise, we trust the Attorney General will be prepared to deal with that situation when it happens.

Mr. Chairman: All right. Are all parties prepared to deal with subsection (1)? Can we deal with this now that the New Democratic Party has withdrawn that amendment? I will call subsection (1), then.

Ms. Gigantes: Which is subsection (1)?

Hon. Mr. Scott: Actually, Mr. Chairman, it might be easier if you called it subsection (2).

Mr. Warner: The right to equal treatment without discrimination? Is that the one?

Mrs. Grier: Yes.

Hon. Mr. Scott: Subsection (2).

Mr. O'Connor: It is not subsection (2).

Mr. Chairman: Let us make sure we know what we are voting on.

All right. It would effectively be subsections (1) and (2).

Interjection: No, it would be only subsection (1).

Ms. Fish: Is this the pregnancy one? Is that the easier way to deal with it?

Mr. Chairman: I just called subsection 17a(1) and I was told it was subsection 17a(2) by the Attorney General. As long as we all know--

Hon. Mr. Scott: My purgatory for that. It was subsection (1).

Mr. O'Connor says it is a pleasure to find me wrong. I do not want to discourage him.

Mr. Warner: Forget about the number; read what we are voting on.

Mr. Chairman: We are voting on subsection 17a(1):

"Section 9 of the Human Rights Code, 1981, being chapter 53, is amended by adding thereto the following subsection."

Subsection (2) is the pregnancy clause:

"The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant."

Motion agreed to.

Mr. Chairman: No one said democracy would be quick and fast, nor is it efficient on occasion, but we are going to deal with this so that we know exactly what we are doing.

Mr. O'Connor's amendment to subsection 17a(5) will be placed now. Is that understood? All in favour of Mr. O'Connor's amendment? Opposed?

Motion negatived.

Mr. Warner: We should have another meeting to explain how the rights of people have been trampled upon.

Mr. Chairman: That may not be a bad idea.

Hon. Mr. Scott: It worked well until the court got in the way. That was the only problem.

Mr. Chairman: All in favour of subsection 17a(5)? Opposed?

Motion agreed to.

Mr. Chairman: Is there anything else you want to deal with tonight?

Hon. Mr. Scott: We have the adults-only housing provision, and there is no amendment now.

Mr. Chairman: The amendment has been withdrawn, so we will deal with subsection 17a(6). All in favour? Opposed?

Motion agreed to.

All in favour of subsection 17a(7)?

Motion agreed to.

Mr. Chairman: I have a motion to adjourn from Mr. Polsinelli. Our next meeting will be on Monday.

The committee adjourned at 6:28 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
MONDAY, MAY 12, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Mellor, L.

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

Ewart, J. D., Director, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, May 12, 1986

The committee met at 3:50 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

Mr. Chairman: I call the meeting to order. Members of the committee, before we started the meeting this afternoon there was some discussion with respect to where we might best get under way. Some of the members of the committee may want to make some comment in connection with section 17a, perhaps on setting that aside and getting on with some other business, at least temporarily. If that is your view and you wish to put that on the record, I will turn to you now for your comments, Mr. O'Connor and then Ms. Gigantes.

Mr. O'Connor: I have today tabled and circulated to the members some amendments to section 17a. Incidentally, I received them just now and it is the first time I have had a chance to read them. They are somewhat different in the drafting than the proposed set I delivered to legislative counsel. Having looked through them, they are a substantial improvement on what I delivered.

Mr. Chairman: There is no doubt about that.

Hon. Mr. Scott: I have seen them, and I know exactly the assistance that Mr. O'Connor got. I am delighted that he is getting help on these difficult matters.

Mr. O'Connor: However, there is still room for improvement on this.

After discussion with some other members of the committee, and with yourself, Mr. Chairman, it was thought that it might be profitable and in the government's interest--because I understand it has some difficulty with some of these amendments even as redrafted today--to put off dealing with these until some later date when we can further amend them and have further discussions with the minister to try to arrive at a package of amendments in this area which will be basically satisfactory to everyone.

Ms. Gigantes: I would be in agreement with that. We have a lot to do today and we want to go ahead with other questions. It is a complex matter, and I would be quite happy to see it left over. That effectively means that we will not deal with it until the last week of May.

Mr. Chairman: That is correct. We have other things scheduled for a week from today and then it would be the last week of May; we shall be looking at the Mental Health Act coming in on May 20, is it not?

Clerk of the Committee: May 20.

Mr. Chairman: All right. Is there general agreement from the committee then? We do not need a vote on this. Unless there is some major disagreement, we will just carry on and start with section 28, which is where we left off.

On section 28:

Mr. Chairman: We do not have any amendments on section 28. I do not believe anything by way of change has been brought to my attention that you wish to bring before us, so I can call the vote on concurrence on section 28, if you want to pass that right away.

Section 28 agreed to.

On section 29:

Mr. Chairman: Is there any comment on section 29 before we go to Ms. Gigantes's amendment?

Mr. O'Connor: I understood from our last discussion on the Retail Business Holidays Act, that we would be receiving some material from the clerk or legislative counsel with respect to the effect of eliminating reference to the Lord's Day (Ontario) Act in that statute. I presume section 29 neither refers to that statute nor has any effect on it, and we can therefore go ahead and deal with the Lord's Day (Ontario) Act.

Mr. Chairman: Do you have any comments?

Hon. Mr. Scott: No comment.

Mr. O'Connor: No further comment. Let us vote.

Section 29 agreed to.

Ms. Gigantes: I have circulated an amendment called section 29a.

Mr. Chairman: Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"29a. Section 7 of the Marriage Act, being chapter 256 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

"7(1) No person shall issue a licence to or solemnize the marriage of a person if the person is or appears to be,

"(a) under the influence of intoxicating liquor or drugs; or

"(b) suffering from any other acute, temporary mental disability.

"(2) No person shall refuse to issue a licence to or solemnize the marriage of a person solely on the grounds that the person suffers from a long-term mental or developmental disability."

Ms. Gigantes: The amendment was circulated with an attached explanatory note. I do not know if people have it in front of them. I know the clerk always does.

Mr. Chairman: I believe it has been circulated. Does anyone not have the amendment proposed by Ms. Gigantes? Any comments?

Ms. Gigantes: If I might, Mr. Chairman, I think the purpose is pretty obvious. We would be making sure that the Marriage Act does not restrict the granting of a licence to or the marrying of a person with a long-term mental or developmental disability. We would restrict the pronouncements of the licence issuance or solemnization of marriage only to people as in clause 7(1)(b) who might be suffering from acute, temporary mental disability.

Mr. Chairman: I believe the Attorney General may have some comment.

Hon. Mr. Scott: The matter is not quite as straightforward as it seems. The proposed section 29a is, of course, an amendment to section 7 of the Marriage Act, which speaks to the capacity to marry. It may well be that section 7 of the Marriage Act is ultra vires because "capacity" is probably a head of federal power under subsection 91(26) of the Constitution, "Marriage and Divorce."

The provincial power is restricted to the solemnization of marriage under subsection 91(26), and it may be that a provincial act speaking to capacity treads upon the federal responsibility. All that means is that if I am right, there may be some legitimate attack made on section 7 of the act as it now stands.

4 p.m.

Leaving that to one side for a moment, because that will not be enough to dissuade Ms. Gigantes from proceeding with her amendment, the new section 7 does not speak to capacity at all, but appears to distinguish between an acute, temporary mental disability on the one hand--where a marriage licence will be refused--and a long-term mental disability on the other, in which a marriage licence and the performance of the marriage will be required.

It seems to me the difficulty is that neither of those descriptions--"acute, temporary mental disability" on the one hand and "long-term mental disability" on the other--are sufficiently precise to be useful. What makes the present section precise is that it speaks to a capacity without encumbering language of any particularity.

The "capacity" is the capacity to marry, the capacity to make the kind of intellectual judgement required before that solemn contract is entered into. From my point of view, any amendment would be inadequate that did not speak to the purpose of the amendment, which is to separate those who have the capacity to marry in a legal sense from those who do not have the capacity to marry. That is point one.

Point two is the distinguishing features referred to in the amendment that do not tie themselves to capacity or, in that respect, do not help them. It seems to me that, under the amendment, whoever is issuing licences will be confronted with a problem substantially greater and less likely to produce fairness than the one he or she is now confronting. Now, he has to zero in on the capacity to marry against which the disability is measured. If the amendment is passed, he will be focusing not on capacity to marry, but on whether there is an acute temporary mental disability, or a long-term mental or developmental disability. That will produce the widest variety of decision-making which will not be fair, either to the officer charged with the duty, or to people who come before him asking for a licence.

Ms. Gigantes: It seems to me we are concerned with the question of

who is called upon to provide the licence or carry out the marriage. Can we provide that person with some kind of understanding of how we intend "capacity" to be read? Many people granting a marriage licence will not be familiar with the legal definition of "capacity" referred to by the minister. Perhaps he can suggest how we can deal with it because I think it is a real problem.

Hon. Mr. Scott: I suggest we deal with it by reference to "capacity to marry"; that is, capacity to enter into the contract of marriage. That, I agree, may not provide any detailed lexicon but at least it gets the officer focusing on the right thing. He does not focus on the disability per se or whether it is mental, developmental or physical. He focuses on whether, in his opinion after what evidence he cares to look at, the person before him has the intellectual capacity to form a valid and subsisting contract.

The present section may have disadvantages, but the advantage is that it requires him to focus on the main thing, the capacity to marry. This forces him to focus on the disability. His analysis of the disability and its nature will be the material he uses to decide if the capacity is present. It seems to me the present section is preferable to this.

Ms. Gigantes: In other areas in which we provide a capacity test, where it is in doubt, a guardian might be appointed. This is not the case in marriage.

Hon. Mr. Scott: I do not know about any such thing. Perhaps I do not understand your point.

Ms. Gigantes: Let me put it this way. If as a patient of Queen Street Mental Health Centre in Toronto, I go to vote, I can vote. Nobody judges my capacity to vote. However, if I go to get married, unless I meet somebody with your legal understanding of either the issue or my licence, I may have somebody say to the licence grantor: "You should not grant her a licence in this case. She was a resident at Queen Street five years ago and I do not think she knows what she is doing."

Hon. Mr. Scott: I cannot help you by telling you what is happening with respect to the voting provision. I do not know. However, if it is your purpose to prevent the officer from examining the capacity of people to marry, you wipe out section 7 altogether.

If you recognize there are certain capacities that should preclude the issuance of a marriage licence, if you are prepared to let him or her make the judgement about whether the person exhibits the capacity to enter into the contract of marriage, then you say: "Your test is not to determine whether the man or woman has a disability or a mental problem or a developmental problem. Your obligation is to determine not any of those things, but rather whether he has the capacity to enter into the contract of marriage."

The trouble with your amendment is that a person who suffers from a long-term mental disability, and whom you would entitle to have a marriage licence, may be a person who has not the capacity to contract. A person who suffers from an acute, temporary mental disability, who is a person you say should not get a marriage licence, may be perfectly entitled to one in the sense that whatever his acute temporary mental disability is, it does not interfere with his capacity to determine all the elements of a contract to marry.

Ms. Gigantes: I understand what you are saying. I wonder if you understand what I am saying. We are leaving open the situation where people who are in the role of making the decision in this case may not understand what you mean when you say "capacity."

Hon. Mr. Scott: You are entirely right in the sense that every system we have--

Ms. Gigantes: If I am a developmentally handicapped person, how am I going to argue the case?

Hon. Mr. Scott: I was not finished. As I was saying, you are quite right to say that officer who makes this kind of decision under the Marriage Act, just as officers under any other act where there is a judicial or quasi-judicial exercise of power, may be good or bad depending on his or her own background, training and experience. We hope they are going to be good.

We try to make them good in two ways. The first way is to draft a section which immediately focuses on the question they have to ask themselves. The question they have to ask themselves is not, "Is he suffering from a developmental disability?" The question is, "Does he have the capacity to contract?" The way you try to make officials with this judicial discretion efficient is to tell them the very question they must ask themselves. The second thing you do is permit an appeal. There is an appeal here to the minister. As well, if there was an error of principle, there would be an appeal by way of judicial review to the courts.

Ms. Gigantes: I do not find it very reassuring, particularly in the case of somebody who is handicapped, to know that if such a person goes with the intended spouse to a clerk in a town in Ontario and looks for a marriage licence, he or she is going to be able to get one without, as a handicapped person, having to go through the process you have described because our legislation does not really give clear enough indication, to my mind and to the ordinary lay mind, to understand what the law says and to ensure that the official involved is going to apply the law in the way we intend.

4:10 p.m.

Hon. Mr. Scott: I am sorry it is not reassuring. However, the problem is that the amendment proposed is worse than the existing section. If you are not reassured by the existing section, the amendment is more difficult. If I were a person issuing marriage licences or issuing anything else under any statute, what I would want is for the section to give me the question I am supposed to ask myself when I see the parties come before me. What is the question I am to direct my mind to? The question is restricted solely to the question of capacity to marry. Perhaps you want to add "intellectual capacity" to remove the possibility that some dolt would consider physical capacity, but to set up the section without putting the question that the person issuing the licence is to ask himself is just to invite trouble.

Ms. Gigantes: When you suggest that there is a difference between intellectual and physical handicap and that a problem may arise under the carrying out of this section of the act, you are indicating precisely the problem that can arise. There is no reason under our law to recognize, and in fact we do not recognize, that a person who is developmentally handicapped does not have a right to get married.

Hon. Mr. Scott: I would just be repeating myself. There is a difference. I think this proposal is less satisfactory than what we have now in terms of the rights of applicants before people who issue licences.

Ms. Gigantes: I disagree.

Mr. Chairman: Is there anyone else who wishes to comment on the amendment proposed by Mr. Gigantes? I see no one else who wishes to participate in the discussion so I will call the amendment.

All those in favour will please say "aye."

All those opposed will please say "nay."

Motion negatived.

Ms. Fish: Mr. Chairman, before you call for section 30, I understand that we have staff with us today, helping our committee in its deliberations, who are severely allergic to cigarette smoke. In consideration of the stillness of the air, I wonder whether our colleagues who are smoking can see their way clear to cutting back today in consideration of the allergies that I understand the staff have.

Mr. Chairman: Thank you for bringing that to our attention. Our colleagues have taken note and I am sure they will co-operate in their usual fashion.

Mr. Polsinelli: The unfortunate thing is that if all our colleagues decide to take a break for two minutes, we will not have a quorum any more.

Section 30 agreed to.

Mr. Chairman: We are standing down section 31 which will be discussed on May 20.

Section 32 to 34, inclusive, agreed to.

On section 35:

Mr. Chairman: We have agreed to reopen this section with a government amendment. It was carried on May 5 and then we agreed to reopen it for a government amendment. I will let the Attorney General introduce the changes he proposes at this time.

Mr. Chairman: Mr. Polsinelli moves that subsection 35(1) of the bill be struck out and the following substituted therefor:

"(1) Section 1 of the Municipal Act, being chapter 302 of the Revised statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 50, section 1, is further amended by adding thereto the following subsection:

"(2) In this act, 'spouse' means a person of the opposite sex,

"(a) to whom the person is married, or

"(o) with whom the person is living outside marriage in a conjugal relationship, if the two persons,

"(i) have cohabited for at least one year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Hon. Mr. Scott: That amendment is one of several designed to reflect the discussion we had the last day by expanding "spouse" to include not only those who are married but also those who live in a conjugal relationship for a year--the evidence test--or who, having lived together for less than a year, have entered into a contract and are the parents of a child.

Ms. Gigantes: If at the death of the male spouse there is a child conceived but not born, what would be the effective date? Presumably this would have application, but would it have to await the birth of the child?

Hon. Mr. Scott: That situation would exist only on a survivorship right, which is not what we are talking about here. Survivorship rights create a certain difficulty because at the date the survivorship right comes into play, the spouses will not be living together, one of them being dead. When we come to situations in which post-mortem entitlements are considered, we would have to go a different route to reflect the kind of change you are referring to. Are you with me?

Ms. Gigantes: Yes, I am.

Hon. Mr. Scott: I do not think that is what we are dealing with in section 35.

Ms. Gigantes: It appears in some of the other cases we are dealing with in this bill.

Hon. Mr. Scott: Yes, it does. That is what I am saying. I am suggesting that this interesting question can be held down until we come to one of those cases.

Ms. Gigantes: Okay.

Section 35, as amended, agreed to.

Section 36 agreed to.

On section 37:

Mr. Chairman: Mr. Polsinelli moves that clause 1(d) of the Municipal Elderly Resident's Assistance Act, as set out in section 37 of the bill, be struck out and the following substituted therefor:

"(d) 'spouse' means a person of the opposite sex,

"(i) to whom the person is married, or

"(ii) with whom the person is living outside marriage in a conjugal relationship, if the two persons,

"(a) have conabited for at least one year,

"(b) are togetner the parents of a child, or

"(c) nave together entered into a conhabitation agreement under section 53 of the Family Law Act, 1986."

Ms. Fish: May I ask why he has not put a similar amendment on section 36, which was passed without further amendment.

4:20 p.m.

Hon. Mr. Scott: As we said the last day, we have been making a distinction between cases where there is some judicial capacity to make a determination about whether there is a spousal relationship and cāses where that determination has to be made on a nonjudicial basis.

In the first case, we do not need an evidentiary standard. In essence, you can leave it up to tne judge to determine whether there is a conjugal relationship. He will not have regard to any time limit at all. In other words, if the conjugal relationship was entered into two days before and it is real, ne or she will so determine and you do not need an evidentiary time limit. You only need an evidentiary time limit when you are dealing with a form or an administrative determination.

I thought it was the consensus last time that we wanted to give the advantage of a spousal relationship to whomever we could. Therefore, we would not build in standards where the determination was going to be made judicially, because that expands the capacity of a person to be a spouse. We would have to build it in where the determination is not made judicially. Our arbitrary selection of one year has been expanded at the committee's suggestion to include the birth of a child and the contract.

Ms. Fish: What you are saying is that section 36, as it now stands, is the broadest possible definition.

Hon. Mr. Scott: Yes.

Ms. Fish: That is what I hoped for.

Mr. O'Connor: May I add to that by saying that in cases such as this, presumably under that statute the spouse is not seeking any kind of a benefit; in fact, it may be very much to the detriment of the spouse, as defined to be a spouse. I assume that section deals with conflicts between two spouses. You therefore do not want a definition such as we have included in the other sections that would perhaps permit the person who is a spouse to escape an obligation or escape a conflict situation, which is what we are trying to prevent.

Hon. Mr. Scott: As you point out, under the Municipal Conflict of Interest Act, the fresh spouse would escape and the old spouse would not; an ironic twist. I would not want to focus just on that possibility because sometimes it works the other way around.

Motion agreed to.

Section 37, as amended, agreed to.

On section 38:

Mr. Chairman: I believe we have decided to reopen section 38 and we have a new government amendment to be introduced.

Mr. Polsinelli: I move that the bill be amended by adding thereto the following section--excuse me; let me start over again.

Hon. Mr. Scott: Delete everything that--

Mr. Polsinelli: Delete everything that I have said prior to this.

Mr. Chairman: Mr. Polsinelli moves that the bill be amended by adding thereto the following section:

"38(1) Paragraph 37 of section 1 of the Municipal Elections Act, being chapter 308 of the Revised Statutes of Ontario, 1980, as enacted by Statutes of Ontario, 1985, chapter 4, section 1, is repealed and the following substituted therefor:

37. "spouse" means a person of the opposite sex,

(a) to whom the person is married, or

(b) with whom the person is living outside marriage in a conjugal relationship, if the two persons,

(i) have cohabited for at least one year,

(ii) are together the parents of a child, or

(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986.

(2) Subsection 6(1) of the said act, as amended by Statutes of Ontario, 1985, chapter 4, section 2, is further amended by striking out "18" in the second line and inserting in lieu thereof "16."

Mr. Callahan: Should that not be Statutes of Ontario, 1982, chapter 37?

Mr. Chairman: That is what it says in the original.

Hon. Mr. Scott: To forestall comments, may I observe that through some oversight, as I understand it, you were not provided with the first part of that motion. That is the spousal definition we have been utilizing in these other sections. I beg your pardon for not distributing it. The second part of the motion is, of course, the matter that we discussed the other day, which will lower the age at which you can act as a scrutineer to 16.

Mr. Chairman: Is there any comment on the proposed amendment? Do you want a moment to look at this?

Interjection: It is straightforward.

Mr. Chairman: I believe so. I will give you a moment if you want to look at it before we call it to a vote. Would you nod if you are ready? We must all be ready. Mr. Callahan has already nodded. Were you nodding in the affirmative or were you nodding off? Which was it?

Mr. Warner: He was just falling asleep.

Hon. Mr. Scott: It is not fair to make Mr. Callahan the guide. Are you saying if he is ready we all must be ready?

Mr. Chairman: That is the direction I have normally been taking in this committee.

Ms. Gigantes: Did we previously delete the printed section?

Mr. Chairman: Yes.

Mr. Polsinelli: The entire section.

Mr. Chairman: We did that on May 5.

Motion agreed to.

Section 38, as amended, agreed to.

Sections 39 and 40 agreed to.

On section 41:

Mr. Chairman: Mr. Polsinelli moves that section 41 of the bill be struck out and the following substituted therefor:

41. Subsection 1(1) of the Non-resident Agricultural Land Interests Registration Act, being chapter 318 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

"(g) "spouse" means a person of the opposite sex,

(i) to whom the person is married, or

(ii) with whom the person is living in a conjugal relationship outside marriage, if the two persons,

(A) have cohabited for at least one year,

(B) are together the parents of a child, or

(C) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Motion agreed to.

Section 41, as amended, agreed to.

We have a section 41a. We have a government amendment and an amendment by Ms. Gigantes that are effectively parallel. It has normally been our

procedure to allow the government amendment to go first. Are you in agreement with that, Ms. Gigantes?

Ms. Gigantes: Sure.

Mr. Chairman: I am glad to have your co-operation. I will allow the government spokesman, Mr. Polsinelli, to proceed with the reading of the amendment.

Mr. Chairman: It is a pleasure to be the government spokesman, particularly for this government.

Mr. Chairman: You are moving the motion.

Mr. Polsinelli moves that the bill be amended by adding thereto the following section:

"41a. Subparagraph ii of paragraph 29 of section 1 of the Occupational Health and Safety Act, being chapter 321 of the Revised Statutes of Ontario, 1980, is repealed."

Ms. Gigantes: I want to say how delighted I am that the government has decided to move on my original amendment and has taken it word for word, not that the wording is terribly sophisticated. It gets rid of an awful anachronism in our legislation as it affects handicapped people. I was more than pleased to hear the Minister of Labour (Mr. Wrye) say they would be moving on this.

Hon. Mr. Scott: It would have been very difficult for us to do so if we had not had Ms. Gigantes's suggestion as to the wording. It was that refined touch which made a difficult task easy.

Ms. Gigantes: Thanks to Betsy Baldwin, you had it in perfect form.

Mr. Chairman: There does appear to be some similarity in the wording.

Hon. Mr. Scott: The concept is a difficult one, of course.

Ms. Gigantes: Very difficult.

4:30 p.m.

Hon. Mr. Scott: To have Ms. Gigantes apply her mind to it has been a great asset to us.

Mr. Chairman: Are you through with all of these glowing accolades that you wish to pass back and forth? If so, I will call--

Hon. Mr. Scott: This dance is part of the accord.

Mr. Chairman: What section of the accord is that? I would like to look it up.

Hon. Mr. Scott: It is called the accord gavotte.

Mr. Chairman: Now that we have all those pertinent comments on

record, we can proceed to call the amendment. All those in favour of the amendment? Opposed? Carried.

Motion agreed to

Section 41a agreed to.

On section 42:

Mr. Chairman: There are no amendments proposed on section 42. Is section 42 carried? Carried.

There are no amendments on section 43, but there is an amendment on--

Ms. Gigantes: Mr. Chairman, on 42--

Mr. Chairman: I am sorry. Do you want to reopen that?

Ms. Gigantes: --we are into another one of these cases of spelling out relationships for purposes of regulation and monitoring of special interests. Here we have a different standard where the relationship between the man and the woman, in or out of marriage--

Hon. Mr. Scott: I think it is the same standard in the sense that clause 26(5)(f) of the Ontario Energy Board Act is the standard definition of "spouse" we have been using when there is no judicial determination.

Ms. Gigantes: Right.

Hon. Mr. Scott: Of course, clauses 26(5)(fa) and (g) are an expansion of it in the conflict of interest setting.

Ms. Gigantes: Thank you.

Section 42 agreed to.

On section 43:

Mr. Chairman: We have a section 43a proposed. The government amendment is on section 43. I will call 43 when you have had a chance to look at it. If there are any comments, please bring them forward now. If not, shall 43 carry?

Section 43 agreed to.

Mr. Chairman: Mr. Polsinelli moves that the bill be amended by adding thereto the following section:

"43a(1) Section 6 of the Ontario Pensioners Property Tax Assistance Act, being chapter 352 of the Revised Statutes of Ontario, 1980, is amended by striking out '12 months' in the second line and inserting in lieu thereof 'three years'.

"(2) Subsection 7(3) of the said act, as enacted by Statutes of Ontario, 1984, chapter 16, section 1, is amended by striking out '12 months' in the fifth and sixth lines and inserting in lieu thereof 'three years'."

Ms. Gigantes: What does that have to do with equality rights?

Mr. Chairman: Mr. Warner, I will let you go first and then Ms. Gigantes.

Mr. Warner: I would like to know why the change is being made and now it relates to our attempt to put all our stuff in compliance with the Charter of Rights and Freedoms. What perceived or real problems exist for the government to move this from one year to three years?

Hon. Mr. Scott: The reason is that there is one limitation under the OPPIA Act and there is one limitation under the Income Tax Act. They are different on the basis of age discrimination, with 65 as the turning point. It was thought desirable for reasons of equality to make the limitation period the same whether one is under 65 or over 65, and that is what this does.

Your colleague Ms. Gigantes will be able to give you the details. You wrote to me about it, Ms. Gigantes.

Ms. Gigantes: Yes, I believe I did.

Mr. Chairman: Ms. Gigantes, do you have further comments?

Ms. Gigantes: No. I am pleased.

Mr. Chairman: Did Mr. Warner completely cover everything you wanted to raise?

Ms. Gigantes: I am pleased, but I had completely forgotten having raised it with the minister.

Mr. Chairman: Anyone else? Shall section 43a carry?

Section 43a agreed to.

Mr. Chairman: There are no amendments to sections 44, 45, 46 and 47. I will take them in a group if you like. Take a moment and we will not have to call them each separately. That is up to the next one where there is an amendment. I assume they are all okay on the basis that you have not come forward with any suggestions for change.

Sections 44 to 47, inclusive, agreed to.

On section 48:

Mr. Chairman: Mr. Polsinelli, on section 48. You are doing a wonderful job.

Mr. Polsinelli: So are you, Mr. Chairman. We are a team.

Mr. Chairman: We certainly are, sir, and I am deeply impressed with the way you are handling this in such an expeditious manner.

Hon. Mr. Scott: I am about to gag.

Mr. Polsinelli: You are making your contacts with the party behind me.

Mr. Chairman: Some look behind and some look forward. Mr. Polsinelli is looking forward.

Mr. Polsinelli moves that subsection 9(2) of the Perpetuities Act, as set out in section 48 of the bill, be struck out and the following substituted therefor:

"(2) For the purposes of subsection (1), 'spouse' means a person of the opposite sex,

"(a) to whom the person is married, or

"(b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,

"(i) have cohabited for at least a year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

This appears to be the standard change that has been introduced a number of times previously. Is there any comment?

Motion agreed to.

Section 48, as amended, agreed to.

On section 49:

Mr. Chairman: There are no changes proposed for sections 49 and 50. I will take the two together. We could include 49, 50 and 51. The amendment pertains to 51a, a new section. Unless you feel strongly about my breaking them up, I will call--

Mr. Warner: I had a question with respect to section 51.

Mr. Chairman: Let us do sections 49 and 50 and I will separate 51.

Mr. Warner: I had a question--

Mr. Chairman: Let us do section 49. Do you have a question on section 49?

Mr. Warner: No.

Mr. Chairman: I will keep backing up until we exhaust whatever questions you might have.

Mr. Warner: That is why I normally prefer to do them one section at a time.

Mr. Chairman: I am just trying to save your time. I am not trying to rush you along at an unrealistic pace.

Mr. Warner: Expediency is not necessarily the companion of quality.

Mr. Chairman: I like that. May I make note of that and use it perhaps on another occasion?

Mr. Warner: Yes. Use it wherever you want to.

Section 49 agreed to.

On section 50:

Mr. Warner: I wondered if there is some reason the definition, as stated in subsection 2, is different from the definition the government has been introducing through the previous sections.

Hon. Mr. Scott: It is for the same reason; in other words, it is consistent with the game plan we have developed for dealing with these to date. What is defined here is a spouse, that is to say, a person who may not witness a power of attorney. Presumably, you would not want to permit someone to witness a power of attorney if you had been living in a conjugal relationship with her for less than a year, but preclude that person from witnessing it after you had lived in a relationship for more than a year. We use here what I call the objective test rather than the time-limited test. because what you do not want is any conjugal spouse acting as witness. If the power of attorney is witnessed and subsequently attacked, it will be for a court or other authority to judge whether the person who witnessed it was your spouse.

4:40 p.m.

Mr. Warner: All right. However, as you re-amended the various sections, including section 48, you decided to put in the little part that says you can have entered into an agreement as specified in the Family Law Act. However, you are saying that does not have any bearing on this section.

Hon. Mr. Scott: We would have preferred to use this definition in every case. The committee was of the view that the expanded definition should be used in certain cases and we have conceded that that is appropriate. This is not a case to which the committee's view would extend the new definition.

Mr. Warner: All right. That is fine.

Section 50 agreed to.

On section 51:

Mr. Warner: You are amending it so that it is "no person under the age of 18 shall act as a private investigator or security guard." What was the age previously?

Hon. Mr. Scott: Twenty-one. That presents a major policy issue. You probably do not think they should be able to do it under 45, but 21 was selected because--

Mr. Warner: And with early retirement.

Hon. Mr. Scott: The age 21 was undoubtedly selected at a time when the age of majority was 21 and we have been moving to 18 in those cases where the age of majority was previously utilized. Confronted by a charter challenge from somebody who wished to be a private investigator and who was 20, it would

be almost impossible to develop a rationalization for age discrimination under section 1 of the charter that pointed to 21 as being that moment in one's life when what was forbidden, that is, private investigations, then became permissible. In other words, there would be no justification for saying 21.

Ms. Gigantes: There is a major inconsistency here because we are saying people can be private investigators at 18, but we are not allowing them to have a drink. How can you do private investigations and not have a drink?

Hon. Mr. Scott: You have fingered another inconsistency. There are those--I am not one of them--who think 21 should be the age for having a drink.

Ms. Gigantes: Then we would be in desperate trouble.

Hon. Mr. Scott: There are even some who think that no drink should be permitted during life. It is difficult to pick an age, and we have moved from 18 to 19. Whether that will survive a charter challenge is another question.

Ms. Gigantes: I do not know whether you ever had the honour and delight of meeting my former colleague Bud Germa from Sudbury, but he used to claim that everybody should be able to drink at any age up until 45, at which point alcohol should be refused.

The Vice-Chairman: On that interesting note, are there--

Mr. Warner: I have had a concern for a long time about what I call the steady increasing growth of private armies throughout this province. The Attorney General is certainly aware of some of the difficulties of outfits such as Securicor and others that have been involved in nefarious activities over the years and have been able to make use of their contracts to promote violence in strike situations. They have been used as agents provocateurs to discredit legitimate unions.

The standards are already low enough for this group. I am not for a moment suggesting that somehow age is a magical way of deciding who is qualified to be what. I know it is arbitrary. I suppose we have to make it age 18 in the interest of having it conform with the charter so that someone cannot now bring a case on the basis of being discriminated against because he happens to be age 20, but I simply want to register my concern. I do not think lowering the age is of great benefit in attempting to have some measure of comfort about the qualities of the various private investigative forces in this province.

It troubles me. I realize I am going to have to vote for it because of the nature of the exercise for this whole bill. I understand and appreciate that and I am quite prepared to vote for it, but I must simply register with the Attorney General, as I have with other ministers, my concern about the private investigative forces which exist in our province and how they function.

Hon. Mr. Scott: If you are going to vote for it, I will not respond.

Mr. Warner: Okay, I will vote against it. Then I will get a response.

Interjections.

Hon. Mr. Scott: Mr. Warner should communicate with the Solicitor General (Mr. Keyes), whose responsibilities include this bill.

Mr. Warner: Yes, I realize that, but you are an important, powerful force in the cabinet. I thought I would register my complaint with you and I will register it with the Solicitor General as well.

Mr. D. R. Cooke: I intend to vote for this section because in the past it may have been that private investigators were middle-aged people--Humphrey Bogart, for example. They may have been people who drank. I do not think that is the case any more. The ones we see on television now tend to be people who jump on cars and jump off bridges. They tend to be getting younger, and we should reflect that.

The Vice-Chairman: With that most interesting observation on the matter, are there any more speakers? No. Shall section 51 carry?

Section 51 agreed to.

The Vice-Chairman: I understand the government has an amendment to introduce, section 51a.

Mr. Polsinelli moves that the bill be amended by adding the following section:

"51a. The Private Sanitaria Act, being chapter 391 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 11, section 202, is repealed."

Ms. Gigantes: When did this come out? What is this amendment about?

Hon. Mr. Scott: It abolishes private sanitaria, and there should be a fairly loud cheer on this subject.

Ms. Gigantes: Tell us why. Tell us what is happening.

Hon. Mr. Scott: There is only one to begin with, but the act licenses private sanitaria, of which there is only one.

There are some sections in this act which are fairly--to use the current popular expression--draconian. Section 56 of that act, for example, allows a judge to detain a person for up to two years in a sanitarium if, on the petition of a friend or relative, it is found that the person is an alcoholic or drug habitué who may be ruining his health.

Mr. Polsinelli: Did they not know about that act?

Hon. Mr. Scott: Sections 13 and 15 permit any mentally ill person to be detained in a sanitarium, for as long as he continues to be mentally ill, on the requisition of two medical practitioners. There are no procedures with respect to appeal or anything like that.

Mr. Warner: Is that being revoked?

Hon. Mr. Scott: Yes.

Ms. Gigantes: This sounds like an old-fashioned English horror story.

Hon. Mr. Scott: Listen to this. This is Ontario in 1986. Section 16 provides that the act's provisions relating to mentally ill persons apply equally to persons who are epileptic.

Ms. Gigantes: Sounds wonderful.

Hon. Mr. Scott: However, the redeeming feature of the act is that there is only one institution in the province that is licensed under it.

Interjection: Which is it?

Hon. Mr. Scott: The Homewood Sanitarium in Guelph.

Ms. Gigantes: Does that mean Homewood will no longer exist?

Hon. Mr. Scott: No. It means that no judge will be able to order a person detained at Homewood or any other sanitarium for the rest of his life on the grounds that he is "ruining his health."

As you can see, the chairman, who has just come back, would be able, under section 56 of the Private Sanitaria Act, to be committed to a private sanitarium and held there for the rest of his life on the grounds that because he is a drug habitué, a smoker, he is ruining his health.

Mr. Warner: Well, he has some redeeming features.

Mr. Chairman: I might add, just for clarification, that the same rules would be applicable to the Attorney General. I want that to get on the record, and I would include in that Mr. Polsinelli, Ms. Gigantes, Mr. Callahan--

Hon. Mr. Scott: Apparently, it is not a place to which you would want to repair with this crowd.

4:50 p.m.

Mr. Polsinelli: On a serious note, since the repeal of this act has direct personal implications, perhaps I can ask the Attorney General whether we should declare conflict of interest.

Hon. Mr. Scott: I am not voting on it one way or the other.

Mr. Chairman: May I ask the Attorney General whether, in the practical application of this section of the act as it now stands, there have been problems and/or concerns that have been addressed to your ministry?

Hon. Mr. Scott: I do not know the answer to that. I suspect the answer is no, because my understanding is that the proprietors of Homewood have not sought to use the compulsory provisions of the Private Sanitaria Act. In other words, they have not obtained their clientele by attending before judges to get these mandatory lifetime terms. I do not think the act has produced any problems with relation to Homewood, and it is obviously a historic holdover that we might as well now get rid of. The reason we get rid of it here is that it is full of breaches of section 15 of the charter. You might say it is riddled with them.

Mr. Callahan: I appreciate the anachronistic effect of this, and the breadth of it seems to be very unfair. But how does a citizen of Ontario deal

with a person who is an alcoholic? Present practice seems to be that the only thing you can do is to wait until that person does some injury to another person, then get him before the courts and perhaps try deal with him in that fashion.

Hon. Mr. Scott: The highly libertarian world we are now living in dictates that we should not be able to deal with anybody unless there are profound social--that is, community--reasons that involve dealing with that person.

In other words, when a person becomes dangerous to the community, or to him or herself, then the community has an interest; but as long as the chairman is merely injuring himself, by and large it is a matter in which personal liberty should be allowed--I agree, just as it is--to have full play.

In other words, we have come to the stage where we are going to stop telling people what is good for them, unless we can demonstrate that doing what is bad for them is at the same time injuring other people.

Mr. Callahan: I would like to pick up on that point, because the people who are injured most by an alcoholic spouse are the children and the other spouse.

Hon. Mr. Scott: Yes, but they are injured in a slightly different way. It seems to me, for example, on the subject of alcoholism, that if there is alcoholism on the part of one of the spouses of a marriage, it is appropriate in 1986 to develop relief for the spouse who is injured as a result of that in terms of separation, family division, remarriage and so on, but it is not appropriate to impose a punishment or disability on the person who is an alcoholic. This act puts them in jail.

Mr. Callahan: Not really. Homewood is not a jail.

Hon. Mr. Scott: Anything is a jail if you cannot get out of it.

Mr. Callahan: Maybe this is an objectionable clause, but surely, quite apart from your comment about this libertarian society we live in, this is one issue that has not been addressed. I have experienced in my practice many times wives coming to me and saying: "I have an alcoholic husband. The children are suffering. I am suffering. What do I do?" There should be some type of procedure, short of that requirement whereby you have to get two psychiatrists who have enough guts to say this person has to receive treatment.

Hon. Mr. Scott: Let me begin by saying that we are a little off topic. I think I agree with you that it is a very real problem for a person to be married to a spouse who is an alcoholic, just as it is a problem to be married to someone who is mean and argumentative and emotionally brutalizing; all those things make for a very unpleasant milieu.

However, in a libertarian society--and I intended to use that not in its new connotation but in the Bentham sense--it is considered appropriate that society should not impose penalties on those people in terms of restrictions or incarceration. Even if the side effect of the penalty will be to benefit the life of somebody else, it is not fair or right to do that.

At the same time, when a spouse comes and explains to you as a lawyer that he or she is living with an alcoholic and that it is very unpleasant and very difficult, we have to provide ways for that relationship to be terminated

with security, with reasonable dispatch and without great litigation. I do not think we want to allow people to punish each other because they are alcoholics--or mentally ill, physically ill or any of those things. To live with someone who has Alzheimer's disease is a terribly unpleasant, draining, destructive experience.

Mr. Callanan: Okay. Fine.

Mr. Chairman: Of course, the same may be said of living with a lawyer.

Hon. Mr. Scott: Indeed, it frequently is.

Motion agreed to.

On section 52:

Mr. Chairman: Shall section 52 carry?

Mr. Warner: I have just one question: Why?

Hon. Mr. Scott: There is no necessity to use the word "widow," which is a gender-related description, because the section, which has to do with how debts can be incurred on public lands, speaks to "heirs or devisees," which are neutral terms that have the effect--

I think "heir" is a neutral term. "Heir" is either male or female.

Mr. Warner: When we remove the word "widow," how does the section read?

Hon. Mr. Scott: There is a subsection that says, "Except by mortgage or charge thereon made in favour of the crown, neither the land nor any interest or right therein is, before the issue of letters patent, liable for the satisfaction of any debt or liability contracted or incurred by such purchaser, his widow, heirs or devisees." If you take out "widow," his spouse will be covered by the phrase "heirs or devisees." You do not need "widow" and you do not need "spouse."

Mr. Warner: Is there not still a language problem?

Hon. Mr. Scott: No. This also relates to unpatented land in Ontario, and there is not much left. There is none where you live, Mr. Warner.

Mr. Warner: Of that I am sure. But is there not still a language problem if it says "his"? Would you not want to say "the purchaser's spouse" or whatever that other word is?

Hon. Mr. Scott: I do not know whether we have taken "his" out.

Mr. Warner: Not according to what I have in front of me.

Hon. Mr. Scott: It looks as if we have not, but the Interpretation Act will, or we can amend that so--

Interjection.

Hon. Mr. Scott: We changed just this one; we have not changed all the rest of the act. There is a section in the Interpretation Act--

Let me begin. We have not made an effort here to go through each of the Ontario statutes to remove the masculine where the sense is applicable to either the masculine or the feminine gender.

Interjection.

5 p.m.

Hon. Mr. Scott: Yes. That would be a mammoth undertaking to no practical point, and it would keep the committee in session for weeks. We are relying on the Interpretation Act, which provides that the use of the masculine or feminine alone includes the other, except where a contrary intention appears in the language of the statute itself. If you removed "his" here, it would be the only section in the Public Lands Act in which the masculine was not used. It is similar to the little exercise we had on the Family Law Act, you will remember, where we were going to put an English section in a French version of the bill.

Mr. Warner: Far be it from me to provide an additional 99 years of work for some folks. You say the Interpretation Act covers this. I accept that. I happen to believe that the language is important because the terms used provide a certain connotation.

Hon. Mr. Scott: I agree.

Mr. Warner: Over the years language has been traditionally very male dominated.

Hon. Mr. Scott: I agree.

Mr. Warner: It is value-loaded. At some point--maybe the advent of computers will make the job easier--it would be worth while for the government to go back through the statutes and make the necessary language changes, if that can be done easily.

Hon. Mr. Scott: Let me tell you a bit about that. It can, but not the way you want to do it. First, we announced in July 1985 that henceforth all new statutes would use neutral language. You were present when the announcement was made. We have been complying with that in so far as it is possible.

Hundreds of acts use what you call loaded language. To introduce a bill to correct them is an extravagant expenditure of legislative and administrative time. It will be possible to correct them as early as 1990, when the next revision occurs, because the revision commissioners under the statute will be able to apply to their revision of the old statutes the policy we have announced with respect to future language in new statutes. They will use "his or her" or whatever is appropriate as the case may be. The cheap way to do what you want is to wait until 1990, when the revision commissioners can do it.

Mr. Warner: If we are both here at that time, I will ask the question again. I have made a note of it. I am satisfied.

Section 52 agreed to.

Mr. Chairman: Section 53, as amended, was carried on May 5. It has been dealt with.

Section 54 agreed to.

Mr. Chairman: Section 54b was carried on May 5.

Mr. Polsinelli moves that the bill be amended by adding thereto the following section:

"54a. Subsection 20(11) of the Public Service Superannuation Act, being chapter 419 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

"(11) For the purpose of this section, a person who has attained the age of 18 years shall be deemed not to have attained that age if since attaining that age the person has been continuously in full-time attendance at either or both of,

"(a) a secondary school; or

"(b) for five years following secondary school, a post-secondary educational institution that is recognized as such by the board."

Hon. Mr. Scott: In the summer or early autumn I announced a series of pension changes that were to reflect concerns on section 15 of the Charter or Rights and that were designed to remove either age or gender qualifications in pension legislation. One is that vesting is based on an age rather than on years of service and one is that only male mortality tables can be used and so on.

This amendment is a small part of that package and reflects section 15 of the charter. The present superannuation provision permits a benefit for which a contributor has paid to be paid to a spouse and children up to age 25. That is age discrimination. There is no justification for picking 25 as opposed to 23 or 27, which can be rationally advanced under section 1 of the Charter of Rights.

What is contemplated by the 25 maximum is a scheme that will permit the benefit to be paid to an adult child who presumably is being educated, and therefore, instead of attempting to encapsulate that principle by using an arbitrary age limit that may not be appropriate, we have moved by this amendment directly to what it is intended to protect.

Mr. Warner: Good amendment.

Ms. Gigantes: Which will expand the benefits available.

Hon. Mr. Scott: It is hard to say. I think it probably will. To know whether it expanded the benefits, you would have to know whether, in a given class, more benefits would be paid if they were paid until you were 25 or if more benefits would be paid by this standard. I think 25 would probably mean that more benefits would be paid. There will be few people who are still in school after age 25, unless they be lawyers or doctors. It is a test that removes an arbitrary age figure.

Ms. Gigantes: Were the benefits previously paid up to age 25 whether the child was in school or not?

Hon. Mr. Scott: No. You had to be in school; age 25 was the limit. I presume this will permit a benefit to be paid to some people who are in school beyond age 25, but the class, it seems to me, is likely to be very small. I suppose in that sense it is an increase. The downside, it is pointed out to me, is that it has to be continuous.

Ms. Gigantes: That could be a big downside, could it not?

Hon. Mr. Scott: It is a minor change, in fact.

Ms. Gigantes: Was continuity required before?

Mr. Ewart: Yes.

Ms. Gigantes: Why is Mr. Polsinelli shaking his head?

Hon. Mr. Scott: It is a natural reaction.

Ms. Gigantes: Come on, tell us.

Mr. Polsinelli: I moved the amendment. I should support it.

Ms. Gigantes: Tell us. You can support it and explain why we should applaud it.

Mr. Polsinelli: I have just one concern, Ms. Gigantes. In the normal course of events, an individual graduates from high school at age 18 or 19--

Mr. Chairman: Speak into the microphone.

Mr. Polsinelli: I do not want it to pick this up.

Interjections.

Mr. Polsinelli: After five years of education, you are looking at age 24, and that is when the benefits would be cut off under this amendment.

Ms. Gigantes: How is that different? Previously, unless the person was in school continuously, the benefits would not have been paid.

Mr. Polsinelli: Yes, but before they could have been paid until age 25.

Hon. Mr. Scott: Here you can take it further than age 25.

Mr. Polsinelli: But to the cap of five years, is it not?

Hon. Mr. Scott: Yes.

Mr. Polsinelli: From graduating from a post-secondary institution.

5:10 p.m.

Hon. Mr. Scott: If you did not graduate from high school until you were 20--and I am sure there are no candidates in the committee for that--then you would go to 25.

The practical difficulty that you have to confront, of course, is to recognize that not every equality amendment is going to expand the beneficent class. If the expansion of classes of benefits was our objective, we would not necessarily have section 15 of the charter. The charter speaks to equality and that means some benefits will be lost but the virtue of equality itself is a compensating replacement.

Mr. Warner: That is the overriding concern.

Hon. Mr. Scott: The point is made and will have to be dealt with when we come to mandatory retirement. Assuming for the moment that mandatory retirement is a breach of section 15, we will have to address the fact that certain benefits are lost or may be lost in certain circumstances by abolishing mandatory retirement. Benefits are lost, arguably, to young people who do not get the jobs that are not available because older people have not retired. But equality itself is the very reward that we get when we order our society in that fashion.

Ms. Gigantes: After that very fine speech, what Mr. Polsinelli has raised is the question of why five years? It could be seven; that would not be age discrimination.

Hon. Mr. Scott: Because five is nondiscriminatory.

Ms. Gigantes: So is seven.

Hon. Mr. Scott: Yes.

Ms. Gigantes: Most people graduate from high school at age 18.

Hon. Mr. Scott: The practical problem here is that five years gets you to the same point as the old statute in almost every case. We are dealing here with an equality section. If we were looking to see how we could maximize the benefits under the act, that would not be the concern of this bill or this committee. We have picked a time frame that comes as close as we can come to getting to precisely the same point we were at before.

Ms. Gigantes: No, it does not, because most people graduate at age 18 or 19. If you add five years, as Mr. Polsinelli has suggested, that means age 23 or 24. We had 25 years before, so why not make it seven years?

Hon. Mr. Scott: The old act was under age 25.

Ms. Gigantes: Let us make it six years.

Hon. Mr. Scott: "Has not attained the age of 25 years."

Ms. Gigantes: I will move an amendment to the amendment.

Hon. Mr. Scott: Before the amendment is moved, and not to preclude the amendment, I will not be able to accept the amendment for the following reason: Amendments such as this, which encroach on the fund, have to go via the Treasury and other people who are responsible for the fund. The purpose of that is to see that the replacement for the discriminatory phrase is selected so that the minimum damage is done to entitlements. I have no authority to accept six or seven years.

Ms. Gigantes: That is fine. Suppose I make my amendment now and we delay voting on it until the minister checks his authority.

Interjection: Do not buy that line.

Ms. Gigantes: It is just one little year. It adds up to the same number of years as we had before.

Mr. Warner: That is a cute argument but it will not hold.

Hon. Mr. Scott: One little year is just like C. D. Howe and "What is a million?"

Ms. Gigantes: You had 25 there before.

Hon. Mr. Scott: We had under 25 before.

Ms. Gigantes: Under 25.

Hon. Mr. Scott: That is 24.

Ms. Gigantes: That is 24 so I am proposing six.

Hon. Mr. Scott: Which on top of 19 is 25. Now I am just about at the end of my capacity to do mathematics. I pray you will not push me a step further.

Mr. Warner: Unless you add zeros and then it is like making out a lawyer's bill.

It is a very interesting argument. There is rarely a piece of legislation which comes before a committee or indeed the House, to which there is not some price tag. For example, when we look at the rate-setting in the work place related to the Workers' Compensation Act, the committee dealing with that matter deals with it as a labour matter and does not run to the Treasurer (Mr. Nixon) asking whether a change in the rate will have some catastrophic effect on the economy of the province. It does not matter which act we take a look at; it will have some economic effect. What we are dealing with in committee is a matter of principle. It is either a good principle or it is not a good principle.

The government naturally has an immediate concern about the Treasury, and we all have concerns about the expenditure of funds. I would suggest that we do not need to go and check with the Treasurer as to whether or not he has enough extra loot to handle whatever perceived problems there may be. Instead, what we need to deal with is the very matter which Mr. Polsinelli raised.

Mr. Polsinelli: I moved the amendment, Mr. Warner.

Mr. Warner: That is true. He moved the amendment and then raised the concern, which is a highly responsible thing to do.

My colleague has suggested we change it from five years to six years so that at least it will provide a benefit to some but not all--most notably those who are trying to obtain their law or medical degrees, as well as those studying to become architects or chartered accountants. It is still a more equitable situation in that it reaches what was there before in terms of years and meets the first goal, which is to bring it into conformity with the Charter of Rights. That is why age 18 was set.

Hon. Mr. Scott: If you were asking to change a provision with

monetary consequences in a statute of which I was the custodian, I would be governed by the principle you apply when you give the example of the Minister of Labour (Mr. Wrye) dealing with the bill of which he is the custodian. I am not the custodian of the Public Service Superannuation Act, nor indeed of any of these other acts.

We have tried to develop a nondiscriminatory formula that most closely approximates, in a practical sense, the discriminatory formulation included in the act. We have done that with the approval of the Treasurer. You can either accept or reject that, or move your own amendment. But I am telling you that without his approval, the section proposed will not be proclaimed. This will be proclaimed, because I have his explicit authority to introduce it.

Mr. Warner: How we go through the proclamation exercises is well understood by members. Committees deal with bills. The government decides whether or not it wishes to proclaim the entire bill or sections thereof; that is its prerogative.

Hon. Mr. Scott: Why would you want to introduce an amendment when you have not the faintest idea of its economic consequences? It strikes me as being extraordinarily irresponsible.

Mr. Warner: I would think that if you were starting from a base--

Hon. Mr. Scott: That got us started. All right. Come on. Let us go.

Interjections.

Mr. Warner: The previous act said age 25.

Hon. Mr. Scott: No, it did not. It said under age 25.

Mr. Warner: Under age 25. An approximation to reach that age would be by adding six to 18. One should assume logically that the expenditure of funds should not be any greater by adding six than it was under the previous legislation. It is commendable that you are attempting some kind of cost-cutting measure by reducing by one year--i.e., to introduce five, which will bring it below the threshold of less than 25.

Hon. Mr. Scott: I am advised that this is a contributory plan. The interest here is not simply the interest of the taxpayer, it is the interest of the contributors. There are trustees of the plan who make the arrangements and approve and examine modifications to the plan. The trustees are selected by those who administer the plan, the government, and by those who can contribute and are the beneficiaries. I am not sure the beneficiaries are included, but the contributors are included.

5:20 p.m.

We go to them and say, "Your act has a discriminatory provision because it is age-related. Will you propose an amendment that will be satisfactory?"

They come back, having reviewed the matter, and make a recommendation. I am not prepared to impose on those trustees a recommendation that has occurred to us one balmy afternoon. They devoted themselves to it and have in mind the interests of not only the Treasury. It is not simply our money; it is that the contributors may have to pay more.

Mr. Warner: Maybe you should have put that up front.

Hon. Mr. Scott: It was up front from the beginning.

Mr. Warner: No. You are telling me now that this amendment comes from the folks who are intimately involved with this plan.

Hon. Mr. Scott: Would that make it any different for you?

Mr. Warner: Yes.

Hon. Mr. Scott: Your cynicism knows no bounds.

Mr. Warner: No. On the contrary, I am giving you credit for making the kind of contact with the affected groups that one should make.

Ms. Gigantes: I have an amendment and if I may, I will speak to it.

Mr. Chairman: Ms. Gigantes moved that clause 20(11)(b) of the Public Service Superannuation Act, as set out in section 54a, as amended, of the bill, be amended by replacing "five" in the first line with "six."

That is an amendment to the government's amendment. We have had an extensive debate on this and I gather--this is only an impression that the chairman has arrived at; sometimes I realize it is an erroneous impression. If the members are ready to vote on the amended amendment, I will call that now.

Ms. Gigantes: I would like to speak to the amendment.

Mr. Chairman: I know there is a great deal more that can be offered on this, and so I was in error. I will give the floor to Ms. Gigantes.

Mr. Warner: I am the one who did all the talking. She did not get a chance.

Ms. Gigantes: I do not believe I saw this amendment before this afternoon. It may be a matter of my own confusion in that we have had six versions of government amendments to the bill over a period of several weeks. I was not aware there was a new pad of new amendments. That is why we have had prolonged discussion on some of the items the government has brought forward today. I hope I will be forgiven that.

The minister has said we may be granting or requiring, as he frames it, in terms of the trustees of the Public Service Superannuation Act, a larger contribution both by the public purse and by those enrolled in the superannuation plan. I think that is fair enough. The reason I do is that it is very normal in Ontario to leave secondary school with a certificate at age 18. If we pass the amendment as it is now framed, we are automatically cutting off some of the entitlement that would have been available previously.

If I had been aware of this amendment coming, I would certainly have sought some additional information about the incidence of benefits under the existing plan and sought to understand better what the changes to the plan might have to be if we introduce the change to "six." On the face of it, it is important that we not move ahead and cut off the possibility of entitlement where previously it had been in existence.

The minister says he has a great deal of difficulty agreeing to this on

a balmy afternoon. I can understand that, but this is an amendment proposed in committee. If he has grievous difficulties in the weeks ahead, then presumably he can do something else about it and give us the information on incidence of benefits in the plan as it exists now. Let him show us how the incidence would change if the period were six years instead of the proposed five and convince us this amendment is not needed. I am very reluctant to pass in committee something that I can see is going to limit benefits. That is why I am proposing this amendment; I hope I have support on it.

Mr. Chairman: All right. Are there any further comments on the proposed amendment, which substitutes "six" for "five"? I will now call the vote on the amendment to the amendment.

Motion negatived.

Mr. Chairman: I will now call the vote on the amendment proposed by the government. Section 54a is a new section, is it not? Shall new section 54a carry?

Motion agreed to.

Section 54a, as amended, agreed to.

Mr. Chairman: We have dealt with section 54b.

Mr. Cooke made a motion on section 54c. Mr. Polsinelli, did you want to deal with this?

Mr. Polsinelli: No, Mr. Chairman. If it is the same motion, then it is on the floor already, is it not?

Mr. Chairman: All right. We have separate sections 54a and 54b, and we have dealt with them.

Mr. Warner: According to my notes we have two sections called 54b. We have 54a, which we have just passed, on the Public Service Superannuation Act. I have in the package 54b.

Ms. Gigantes: No, it is section 58.

Mr. Warner: I am sorry; section 54b is the Railways Act. Is that correct? We have already passed that.

Mr. Chairman: Yes. That was the one dealing with the requirement of citizenship.

Mr. Warner: My notes show we passed that. We are now at section 54c, which is the Workers' Compensation Act. Is that correct?

Mr. Chairman: No, it is the Retail Business Holidays Act. That was the one of concern to Mr. O'Connor.

Ms. Gigantes: No; it was of concern to Mr. Warner.

Mr. Warner: Yes, I asked that this be stood down. I took a look at the Lord's Day (Ontario) Act. My concerns are covered. There is no problem.

Mr. Chairman: Are we prepared to deal with section 54c then?

Hon. Mr. Scott: Does Mr. Warner know exactly what it does?

Mr. Chairman: I believe he has carried out his own review of section 54c and the Lord's Day (Ontario) Act, and he is satisfied.

Mr. Warner: Precisely. I did some reading.

On section 54c.

Mr. Chairman: This section has already been placed. We set it aside in order for Mr. Warner to review some of the specific implications of what was being suggested. I gather he is now satisfied, so I will call the vote on new section 54c. Shall 54c carry?

Section 54c agreed to.

Mr. Chairman: Section 55 has been dealt with.

On section 56.

Mr. Chairman: Are there any comments on section 56? There are no amendments. Shall section 56 carry?

Section 56 agreed to.

5:30 p.m.

Mr. Chairman: Section 57 and section 58a were carried on May 8. We have to deal with the main body of section 58.

May I recap this for the committee's information? We have not dealt with section 58. We did deal with section 58a, which was a new section carried on May 5. We have a government amendment on section 58b and we have a new section 58c, which was moved and postponed on May 6 for a new amendment. I will deal with each one separately so as to not cause any confusion. We will start with section 58.

On section 58:

Mr. Chairman: Is there any comment on section 58? Should I call section 58?

Section 58 agreed to.

Mr. Chairman: Section 58a, as I indicated, has been dealt with.

Mr. Polsinelli: I have a motion on section 58b.

Mr. Chairman: Oh, no.

Mr. Polsinelli moves that the bill be amended by adding thereto the following section:

"58b. Subsection 1(5) of the Teachers' Superannuation Act, 1983, being chapter 84, is repealed and the following substituted therefor:

"(5) For the purposes of determining entitlement to a survivor allowance under this act, the person who has attained the age of 18 years shall be

deemed not to have attained that age if since attaining that age that person has been continuously in full-time attendance at either or both of,

"(a) a secondary school; or

"(b) for five years following secondary school, a post-secondary educational institution that is recognized as such by the commission."

Mr. Warner: We have the same unfair situation being presented to us as was previously. In effect, what we are doing, if the government would be only a bit more forthright, is removing a benefit. The Attorney General has posed it that to amend the section from five years to six years is imposing an additional financial burden on the Treasury. I argue the converse; that by making it five years from what is the present situation, we are disentitling certain individuals. We are removing a benefit from some individuals.

Ms. Gigantes: In the name of equality.

Mr. Warner: The Attorney General argues that this is the price one pays because of the greater good of equality; that under the Canadian Charter of Rights and Freedoms equality section, it is a greater good to have attained equality in this case by way of age, i.e., 18, than it is to be concerned about losing a benefit. The same will be true when we get into the debates over mandatory retirement. I acknowledge that there will be arguments about loss of benefits because of the mandatory retirement age, if it is removed. It is quite arguable whether losing a benefit is a loss of a certain measure of equality.

In other words, if I lose a benefit because of a change in the act, then am I being dealt with in a fair and equitable way? If we have persons who up until now would be entitled to a certain benefit and that benefit is removed because the Legislature arbitrarily changes the age requirement, then I would argue that we are not treating those individuals in a fair and equitable way.

One answer to this is to do the arithmetic so that when you make the change to 18, by making it six years instead of five, you should then ensure that all the individuals who were previously entitled will now be entitled, instead of automatically excluding certain individuals who unfortunately now will be cut out because of someone's inability to do math.

You are the crew chief here. Are you going to place the amendment?

Mr. Chairman: You are working very hard on this one.

Mr. Warner: The reason I hesitate is that under the rules, to be fair, you are not supposed to speak before placing an amendment. You are supposed to place the amendment. I have already made a speech. I am not supposed to be allowed to place an amendment.

Mr. Chairman: I am anticipating an amendment, since we dealt with this same section a moment ago. I realize you have not accepted defeat on it, so I am allowing you to attempt to win the case.

Mr. Warner: I never accept defeat.

Mr. Chairman: I can see that all members of the committee are listening with great interest; so carry on.

Mr. Warner moves that section 58b be amended by replacing the word "rive" in the first line of clause (o) by the word "six".

I think that amendment is understood. Is there any further comment? There being none, I will call for the vote.

Mr. Callahan: Are the members not going to be persuaded by logic?

Mr. Chairman: Maybe they have been.

We have an amendment to the amendment by Mr. Warner. Shall the amendment to the amendment carry? Opposed?

Motion negatived.

Mr. Callahan: Was it the same vote again?

Mr. Chairman: I believe I could have said that just as easily. It looked like the same vote, except that we have been joined by Mr. O'Connor since the time the last vote was taken.

Mr. Callahan: So there is one more.

Mr. Chairman: That is right; it is going deeper into the pile.

I will now call the amendment, section 58b, which was put forward by Mr. Polsinelli, acting as spokesman for the government on this matter.

Mr. Polsinelli: Just refer to me as the government spokesman on today's occasion. It may be the last time.

Mr. Chairman: All right. Shall section 58b carry?

Section 58b agreed to.

Mr. Chairman: Mr. Cooke, would you like to withdraw your amendment, since we now have another government section being proposed on this one? You may move it if you wish.

Mr. D. R. Cooke: Yes, I will withdraw my proposal. On further reflection, I think Mr. Polsinelli has a better idea.

Mr. Chairman: It sounds as if he is a member of the Ford Motor Co. He has a better idea.

Mr. D. R. Cooke: He has convinced me.

Mr. Chairman: Mr. Cooke moves that the bill be amended by adding thereto the following section:

"58c. Subclause 1(1)(xa)(ii) of the Workers' Compensation Act, being chapter 539 of the Revised Statutes of Ontario, as enacted by Statutes of Ontario, 1984, chapter 58, subsection 1(7), is repealed and the following substituted therefor:

"(ii) were not married to each other and

"(a) had cohabited for at least one year;

"(b) were together the parents of a child; or

"(c) had together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Mr. Chairman: Are there comments on the new amendment? There being none, I will call for your concurrence with section 58c.

Section 58c agreed to.

Mr. Chairman: Members of the committee, we cannot deal with anything further at the moment.

Hon. Mr. Scott: We could go right around to section 1 again.

5:40 p.m.

Mr. Chairman: Do you want to do that? I was going to see if we could get adjournment fairly shortly, because we have to go in for the vote on the throne speech.

Ms. Gigantes: It will be at 6:30 p.m.

Mr. Chairman: It will be 6:15 p.m. if you go right to the wire.

Ms. Gigantes: There are two amendments I circulated with which we have not yet dealt. They affect the Building Code Act and the Employment Standards Act.

Mr. Chairman: What sections are those?

Ms. Gigantes: Section 2a, affecting section 19 of the Building Code Act and section 13a, affecting section 24 of the Employment Standards Act.

Mr. Chairman: Do you want to deal with section 2a? Is there a problem for the government with dealing with that?

Hon. Mr. Scott: Which is that? The one that affects housing?

Ms. Gigantes: Yes, the building code.

Hon. Mr. Scott: I have no objection to dealing with it. The government opposes it, and I will be able to tell you why in due course.

Mr. Chairman: Does everyone have a copy of section 2a? I do not know whether we have extra copies here or not.

Ms. Gigantes: They were part of that package.

Mr. Chairman: I know they were circulated, but we may be short of copies. I do not know if we have adequate copies for everyone at this time. Mr. Cooke, do you have a copy?

Mr. D. R. Cooke: Yes.

Mr. Chairman: Is everyone else okay with this particular amendment? Ms. Gigantes, would you like to speak to this one?

Ms. Gigantes: Should I move it first?

Mr. Chairman: Yes, please.

Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"2a. Section 19 of the Building Code Act, being chapter 51 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

"(3) A regulation made under clause (1)(o) shall not provide an exemption from any requirement with respect to,

"(a) access by handicapped persons to new buildings or to existing buildings to which extensions or material alterations are made; or

"(b) amenities for handicapped persons in any building described in clause (a)."

Ms. Gigantes: The amendment is essentially aimed at making sure that, under the building code of Ontario, access to buildings shall be built into new buildings and major renovations. That is accomplished by removing existing exemptions in the Building Code Act.

Hon. Mr. Scott: The government opposes this proposal. I have some questions in my mind about whether we are ad idem about what this does; maybe we are. I am advised this amendment would have the following effect in Ontario:

All residential units, including single-family dwellings or apartment units, would have to be accessible. Anybody who applies for a permit for any purpose, even in an existing building, would have to render all parts of his single-family dwelling accessible before he could get his permit to build a framed-in porch. The cost for single-family dwelling owners in Ontario will be extraordinary, because accessible means not only wheelchair accessible, but also it presumably means accessible to any person, whatever his mode of travel. It would not exclude people who travel in beds rather than in wheelchairs.

Second, it would serve to make all industrial occupancies, ranging from foundries to mining facilities, accessible. The cost of making those facilities accessible would be equally extraordinary. I suppose the question of how to make a mine accessible is a technical problem; you dig it a lot wider and have different conveyances in it, but it is a very expensive operation, and it would apply to any case of a renovation requiring a permit.

The ramifications of the amendment are extraordinary. The Minister of Housing (Mr. Curling) has told me the code is in the process of being amended to provide some increased accessibility and that the he or his staff have met with certain organizations for the disabled in respect to those accessibility provisions. The government cannot accept this amendment.

Mr. Chairman: Ms. Gigantes, was that your intent?

Ms. Gigantes: No, and I am not sure that is the effect.

Mr. Chairman: As I read the amendment, I concur entirely with what the Attorney General has said because it does not talk about government

buildings nor does it exclude the private sector at all from being impacted by what you are suggesting here. I read it as well that every single building permit from this day forward would go through this horrendous exercise of having to provide for some form of accessibility in cases where it is totally unnecessary and unneeded. I do not think that that is what you intended.

Ms. Gigantes: Hang on, Mr. Chairman, it is indeed--

Hon. Mr. Scott: If I could just add one note so we are all on the same playing field, a building permit is required where there is a material alteration. A material alteration may be, as cases have decided, a relatively trivial alteration. Expanding a window to make it a major picture window may, in certain circumstances, be a material alteration. Under clause 2a(3)(a), the granting of that permit will require an indication that the building has access for handicapped persons, because that is an existing building to which an alteration requiring a permit has been made.

The chairman is, therefore, right. There would be no necessity to make a building accessible if it was not new or if there was no requirement of a permit. That is to say, if you do not build anything that requires a permit, they probably would not touch you but permits are required for so much these days.

Ms. Gigantes: Let us deal with these two items separately, if we can, for purposes of discussion.

Hon. Mr. Scott: A fence, for example, may be a material alteration.

Ms. Gigantes: For new buildings, it is the intent of this amendment to suggest that access be provided. The reason for that is that we have the intent here to provide that handicapped people will have access in Ontario to buildings, occupations, housing--

Mr. Chairman: What about private buildings?

Ms. Gigantes: Certainly.

Hon. Mr. Scott: That is just ludicrous.

Mr. Chairman: Do you realize the cost that has been triggered by what you are suggesting? You are doing it in an appropriate fashion in some sense. Your intentions are correct, but do you mean to say that in my home--I built a patio on my summer home--I would then have to rip out the entire front of my house to provide access for a wheelchair or potentially for an ambulatory patient in a bed.

Ms. Gigantes: I tried to separate two items and you agreed that we would discuss one after the other. I was talking about new buildings.

Mr. Chairman: Let us take homes as an example. Do you realize the additional cost of doing what you are talking about? Let us take second stories. You would have to have ramps put in in some instances. Stairways would have to accommodate some electrified chairlift. There would be all kinds of things that would come under this as I read this.

Ms. Gigantes: Yes, that is how you should read it. That is my intent.

Mr. Chairman: All right then, I understand what you are saying.

5:50 p.m.

Ms. Gigantes: My intent is that handicapped people should have access to new buildings. What I would like, and what I had hoped to achieve by this, is to have commercial buildings and public buildings, which are normally accessible to all other people, accessible to handicapped people. Perhaps the amendment is not phrased in the right way. Perhaps the Attorney General (Mr. Scott) has some suggestions as to how we might limit the phraseology so that I achieve what I am trying to achieve. I sought legislative counsel's assistance on this and I think my purpose is clear. It is that we not keep on building buildings in Ontario where commercial activities are carried out and where public access is normally--

Hon. Mr. Scott: --restricted it.

Ms. Gigantes: Then suggest how we change it.

Hon. Mr. Scott: The Ontario Building Code applies to all buildings in Ontario. What you are saying is that every subdivision house constructed has to have the kind of accessibility to which you refer. In all cases, that is going to be extraordinarily expensive. Even in public buildings, under the Human Rights Code, all proposals, even the ones that are being developed, hedge a little, at least for the time being. This has no hedges in it at all. Mr. Baker's amendments will look like nothing compared to this.

Ms. Gigantes: Mr. Baker's amendments deal with existing buildings, and existing building and new buildings are two different things. We all sit around here and wring our hands about how difficult it now is to retrofit buildings and public facilities that we built stupidly that bar a great number of the residents of Ontario from entry and from access to services. What you are telling me is that we are going to continue doing that and we will try to balance the retrofit costs against the needs of the handicapped for ever.

Hon. Mr. Scott: No, I am not telling you that.

Ms. Gigantes: In the building code, every clause that you have does not apply to every kind of building.

Hon. Mr. Scott: What I am telling you is that any new building that takes place will take place in the light of the amendments we are making to the Human Rights Code later on, whatever form those ultimately take. Anybody building a property from now on, or even doing a major renovation of it, does so aware of his responsibilities or what his responsibilities may be when the new Human Rights Code provision is enacted.

There may be owners of single-family dwellings or my farm cottage who are prepared to take the risk that no one will ever take me to the Ontario Human Rights Commission. Therefore, I will save \$50,000 now rather than retrofitting my farm house against the day I may be brought to the human Rights Commission. All new builders or new renovators will be aware, after this act is passed, of the risk of Human Rights Code application if access under the Human Rights Code is normally required.

The second thing is that we have no idea of the costs of this amendment, though I safely think it must be billions of dollars over five or 10 years, especially if we want to get any housing built.

The third thing is that the minister responsible, who is the Minister of

Housing (Mr. Curling), has told me to tell you, and it is the case, that he is meeting with representatives of the disabled community to increase accessibility under an amended building code. I propose that you should let that exercise be carried forward and then it will be his responsibility to produce a code that I hope will reflect the concerns you have.

Ms. Gigantes: I wonder how he is going to face the impossible task of dealing with the fact that it is going to cost billions of dollars to design new buildings to provide access to handicapped people.

Hon. Mr. Scott: He is going to have a more balanced test than the one you have proposed, which is to say that everybody who puts in a screened porch is going to have to make every washroom in his house and every stairwell accessible.

Ms. Gigantes: I am willing to have my amendment amended, but I am not willing to have the minister suggest that we are going to amend the building code some time in the future, so that we design buildings with forethought for access by handicapped people. Here again, I am talking about buildings that we would describe as buildings the public has access to for services, for recreation and for housing.

Mr. Chairman: Stores? Commercial buildings?

Ms. Gigantes: Yes. Absolutely. The minister suggests it will cost billions of dollars. This is actively promoting the notion everybody has allowed to exist for years that it costs more to design things so handicapped people can have access, and that is not true.

Hon. Mr. Scott: First, do you want it to apply to renovations?

Ms. Gigantes: If they are major renovations, certainly.

Hon. Mr. Scott: How are you going to define "major renovations"? "Material alteration" in the building code, which is--

Ms. Gigantes: Take that phrase out. I am suggesting that if you have the will to do what you have said the Minister of Housing wants to do, then do not talk to us about the billions of dollars of cost of designing new buildings.

Hon. Mr. Scott: Let me say one final thing: I do not accept the proposition, and I may be criticized for this by you, that because I own a house and wish to redesign the second floor or alter it for my own use, I am obliged to make that house in every way handicapped-accessible, which will mean new bathrooms suitable for wheelchairs, which will require new stairwells and new hallways throughout the house.

Ms. Gigantes: Does the public normally have access to your house?

Hon. Mr. Scott: No, but you have imposed no restriction on public access. That is what the Human Rights Code deals with.

Ms. Gigantes: Then let us talk about existing, new buildings to which the public would normally have access. I am quite willing to amend it. If I understand the minister, I will do my best to amend my amendment.

Mr. Chairman: With respect, we have all-party agreement that we will

complete this debate by 6 p.m. That was a previously agreed time restriction. Other speakers wish to participate. Ms. Fish is next, then Mr. Warner and then Mr. Partington.

Ms. Fish: I welcome Ms. Gigantes's amendment because she is touching on an area that is deserving of considerable examination. I listened carefully to the Attorney General suggesting that in his view there was a more narrow focus that might be appropriate with possible word changes. He said on more than one occasion, just moments ago, that the Minister of Housing has under way major amendments to the Ontario Building Code, dealing with accessibility, that he intends to bring forward.

I very much object to rushing through in the next two minutes consideration of this fairly important point that is being raised. I am also very chary of simply ruling out one particular set of words on the suggestion that the Minister of Housing--who is not entirely certain what he is doing with his rent review legislation, whether he is withdrawing it, amending it, proceeding with it or letting it die--is moving ahead on changes to provide increased accessibility for the handicapped.

Therefore, I suggest that not only do we stand this amendment down for discussion on another day, but also that we ask the Minister of Housing to join us at committee, as other ministers have done, to assist us specifically on the question that clearly relates to this amendment, which is what changes are being proposed to the Ontario Building Code and how they may or may not fit with what is intended in Ms. Gigantes's amendment.

Mr. Warner: I agree that there is a problem. I would be very shocked if there were members of this Legislature, from whatever party, who were not aware that there is a problem of handicapped people having access to our world. What we have to do is find a solution. My colleague has put forward a suggestion and some concerns are raised about it. We ought to go back and take another look at it.

6 p.m.

I was convinced years ago that changes were needed not only to the building code, but also to the section of the Education Act that pertains to the teaching that takes place in our schools of architecture. From day one, the folks who are designing public and private buildings have to know what they are designing and why they are designing them. They have to know how to be sensitive to the needs of handicapped people. That has not happened before.

I want to relate quickly two anecdotes that, to me, show us that although it is 1986, in this country we are still living in the 1800s. In my area they finished the light rail transit, supposedly one of the most modern pieces of technology anywhere on the face of the earth. It is totally inaccessible to people in wheelchairs due to the insensitivity of the Toronto Transit Commission and others. People in wheelchairs cannot get on the thing. I doubt very much whether blind persons could find their way on to that machinery very easily either.

Second, a school board that will remain nameless has on its staff a person who is confined to a wheelchair. She is in a position of authority. A couple of weeks ago, she was asked to attend a meeting with other people of a similar position in the school board at a particular school. They all gathered in the meeting room on the second floor of the school and she sat outside the building in her wheelchair, unable even to get in the school, let alone to

attend the meeting to which she had been summoned. To compound the problem, because of modern technology she has the advantage of one of these battery-operated, electric wheelchairs, and you know how much they weigh. It took four people to lift her and the wheelchair up two flights of stairs because naturally there was no elevator, no ramp, nothing.

This is 1986. Are we going to sit idly by and not do anything about it? The Attorney General says no. I am pleased to hear that.

Hon. Mr. Scott: The minister announced a task force in October and I think it has made its report. He is well under way with this exercise. It seems to me that this is getting well beyond equality rights.

Mr. Warner: No.

Hon. Mr. Scott: I understand your point.

Mr. Warner: I hope that is in Hansard, "well beyond equality rights." No. I say that it is a measure of equality. If we believe that all citizens of Canada have certain rights that are equal, that includes handicapped persons.

Hon. Mr. Scott: David Warner, you are being a little silly. If your house requires a building permit, are you telling me that you will spend \$50,000 or \$75,000 to make your house accessible so that you can put a framed-in back porch at the back of it? Where I come from, houses are only 15 feet wide. You would have to have a ramp like you have outside Queen's Park.

Mr. Warner: I regret that the Attorney General was not listening to my remarks.

Hon. Mr. Scott: It was testing you.

Mr. Warner: I did not mention anything about spending money on my house or your house or anybody else's house. What I am saying is that--

Mr. Polsinelli: You have to bring it down to reality.

Mr. Warner: The reality may be not--

Mr. Chairman: Mr. Warner, I realize you are launching into an argument here. I have Mr. Partington yet to speak. Can you carry on with your remarks and then sum up so that I can move to other speakers? We are beyond 6 p.m.

Ms. Gigantes: Can I move on a procedural point that we simply adjourn this discussion?

Mr. Chairman: Yes. If I get the mood of the committee correctly in listening to Ms. Fish's remarks, you may wish to deal with this in a somewhat more relaxed fashion, rather than trying to hit some arbitrary deadline. I do not think there is anything inappropriate about that, so if you would like to leave this matter incomplete and open for the moment, it would give Ms. Gigantes an opportunity perhaps to tighten up her amendment, to discuss with other members of the committee what might be acceptable in terms of a step in the direction she is proposing, and we could deal with it more fully at a later point.

Mr. Warner, I have cut you off. May I refer to Mr. Partington for a moment in case he has something further he wants to add.

Mr. Partington: My remarks are perhaps not needed. From the party that is always emphasizing low-cost housing and emphasizing a housing crisis, the amendment--perhaps it was not meant to be this broad--would make the crisis go through the roof. There would be housing for no one at any income if this amendment were passed.

Mr. Chairman: Mr. O'Connor is the final speaker on the matter before I call for adjournment.

Mr. O'Connor: I agree with my colleague's comments about dealing with this matter at a later date. Can we deal with the second part of her suggestion, that the Minister of Housing be asked to attend to assist us in our deliberations?

Ms. Gigantes: I did not ask that.

Mr. O'Connor: We did. You were not listening.

Ms. Fish: I did.

Mr. O'Connor: As the minister has pointed out, he has conducted a task force and it has reported. I think his comments in this regard could be of considerable assistance to us.

Hon. Mr. Scott: I hope that this amendment can be considered after we have dealt with the Human Rights Code amendment. When we have dealt with the Human Rights Code amendment, we will have some sense of the dimension of the problem. Then, it seems to me, the committee will have to decide if it is going to take evidence. If you want evidence on this, including the minister, I think you should have evidence. We will attempt to provide it if you want to go this route of having architects and engineers and obtaining some estimate of the costs.

Ms. Fish: I tried to draw a parallel with the attendance of the Minister of Labour (Mr. Wrye) at the committee one day, sitting immediately to the Attorney General's left--

Mr. O'Connor: And the Minister of Health (Mr. Elston).

Ms. Fish: --and the Minister of Health coming next week to assist the committee. I can see no reason whatsoever why, if reference is being made to work within the Ministry of Housing, the Minister of Housing would be unable to attend in a similar capacity to assist the committee.

Ms. Gigantes: In terms of scheduling, I am quite happy to go ahead with the Human Rights Code amendments first. I have no objection to that whatsoever as long as we can renew this discussion at a later time.

Mr. Chairman: Note has been taken of that. I believe we have agreement that we can reopen this. Do we have an answer to Ms. Fish's query with respect to the Minister of Housing? Do you want to respond to that now?

Hon. Mr. Scott: I will be glad to consider it.

Mr. Chairman: That being the case, we have had a relatively productive afternoon. I ask that we finalize our discussion now.

The committee adjourned at 6:08 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
TUESDAY, MAY 20, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callanan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Hennessy, M. (Fort William PC) for Ms. Fish

Also taking part:

Henderson, D. J. (Humber L)

McClellan, R. A. (Bellwoods NDP)

Runciman, R. W. (Leeds PC)

Clerk: Mellor, L.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ontario Medical Association:

Saunders, Dr. J. A., Director, Health Services

From the Clarke Institute of Psychiatry:

Hoffman, Dr. B., Staff Psychiatrist, Adult In-Patient Service; Associate Professor, Faculty of Medicine, University of Toronto

From the Ministry of Health:

Ward, C. C., Parliamentary Assistant to the Minister of Health (Wentworth North L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, May 20, 1986

The committee met at 3:51 p.m. in room 228

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

Mr. Chairman: I call the meeting to order. I have been given indication of some matters of procedure that members wish to raise. First, Mr. O'Connor, following whom I will turn to Mr. Partington and then to Ms. Gigantes regarding procedural matters they have advised the chair they wish to raise at the outset of the meeting.

Mr. O'Connor: By way of a point of privilege, which I suggest affects not only my privilege but the privilege of all members of this committee, I wish to raise a question relating to the Hansard reproductions of our committee deliberations and particularly the so-called Instant Hansard reproductions of our deliberations. I had occasion recently to require and request Hansard on past committee meetings. I am told it now takes between two and three weeks to obtain even the Instant Hansard sections.

I had occasion recently to look up the definition of the term "instant" in the Concise Oxford Dictionary and found that it means "occurring immediately; hurriedly produced; urgent, pressing." I suggest, by anybody's definition of "instant," the Hansard we are receiving is clearly not that. There is a problem. I suggest we are entitled to obtain Hansard much more expeditiously than the two weeks to three weeks in which we are getting it at present. I do not in any way blame the persons involved in the Hansard situation. I know they and their facilities are taxed to the limit and they are doing the best they can.

A couple of solutions come to mind; proposals for the committee to consider. One is to allow us access to the tapes taken of these meetings. I made that request of Hansard and was told that was out of the question and will not be done. That would assist on a more instant basis than the two to three weeks they now take to produce their reports.

More important, perhaps, Mr. Chairman, you should be directed to send as strongly a worded message as possible to the Legislative Assembly, which is responsible for the production of Hansard, to see whether there is not some way around the problem that continues to plague us. I recall we had a discussion at the outset of our meetings on Bill 7 several weeks ago. As I recall, and I have not seen this in Hansard because it is not yet available, there was some kind of promise made that it would be quicker and better produced than in the past.

The least we should do is redefine the term "Instant Hansard" and drop that very misleading adjective, as it does not mean what it is supposed to mean.

We should at least make some formal approach to the Legislative Assembly to try to resolve this problem.

Mr. Chairman: As chairman, a matter of weeks ago I took the action you suggested and made it known to the Speaker I was not satisfied with the delay in our receiving Hansard. The appropriate action would probably be to run a copy of my earlier letter with a supporting statement based on the committee's feelings, if it directs me to do so today, to reinforce what I said earlier. I would be pleased to do that. I am apologetic for the delay in Hansard, but it is out of the hands of the chairman. I will make every effort to get it here more quickly than has been the case in the last while.

Mr. O'Connor: If you are redirecting a letter to Hansard, may I ask you to include the suggestion that we have access to the tapes of the meetings under appropriate circumstances, if we make a proper request, and that we set up a time to do that?

Mr. Chairman: Certainly. Is there any disagreement with the action being proposed by Mr. O'Connor? If not, I will take that action, which is to press on for the receipt of earlier transcripts of Hansard. I see no disagreement with Mr. O'Connor's position. I then consider that closed, and we will proceed.

Mr. Partington: I understand that today we will be proceeding with amendments to the Mental Health Act.

Mr. Chairman: Yes.

Mr. Partington: We have heard submissions with respect to civil rights; I think we perhaps have not heard enough with respect to patients' rights. We have with us today Dr. Jack Saunders, who is the director of health services with the Ontario Medical Association, and Dr. Brian Hoffman of the Clarke Institute of Psychiatry, who is also an executive of the Ontario Medical Association and of the Ontario Psychiatric Association. I believe it is important in dealing with these very substantive amendments that we hear from these gentlemen. I do not see how we can properly deal with this in the best interests of all without having their input.

Mr. Chairman: Mr. Partington moves that we reopen the hearings so that we may hear specifically from both Dr. Jack Saunders and Dr. Brian Hoffman.

By way of clarification, the motion is for this group only?

Mr. Partington: Yes.

Mr. Chairman: We may have other requests. I believe another request is either in or coming in, not with respect to the psychiatrists' area of interest, but with respect to the developers' area of interest as it relates to adults-only buildings. Your motion is for this group only.

Mr. Partington: Yes, it is, today.

Mr. Chairman: Is there any comment?

Ms. Gigantes: I do not see the need to reopen submissions, but if we are to reopen submissions it might be useful to hear from people besides Dr. Saunders and Dr. Hoffman. The nature of the amendments we are dealing with has

little to do with the treatment of patients. The amendments I have tabled and the amendments addressed by the Ministry of the Attorney General deal with such matters as admission, status on appeal, transfers, incompetence determination criteria, restraint, file access and limitations, general process and procedures as they affect the rights of psychiatric patients.

4 p.m.

I do not see it would be enormously valuable to get into a discussion of great complexity about psychiatric treatment. There may be questions we will want to raise around a variety of these items, but we did ask for the assistance of staff who are familiar with both the legislation and with current practice with regard to psychiatric patients in Ontario. Those people will be available to us. There probably is some difference of opinion on some of the items I have mentioned, but I do not know that we need to reopen our hearings. I, for one, would be very reluctant to do that without calling upon other people who have provided proposals that may be the ones the gentleman referred to by my nonourable friend would like to speak to.

Basically, my position would be that we should not reopen hearings. If there are matters of fact or current practice we should know about, we can ask the staff who have been made available to us today.

Mr. Chairman: Before I go to the next speaker--and I have a long list of members who have indicated an interest in speaking on this matter--I would like to read into the record a letter I have just now opened from Gordon R. Cunningham, president of the Ontario Hospital Association, re Bill 7. It is a very short letter.

"I am writing to you with respect to Bill 7 and the proposed NDP amendments to the Mental Health Act. Approximately 69 public hospitals in Ontario are designated as psychiatric facilities. These institutions are governed by the Mental Health Act, as well as the Public Hospitals Act.

"The Ontario Hospital Association has reviewed the proposed NDP amendments to Bill 7 respecting the Mental Health Act, and we urge that the committee reject these proposals pending a thorough review of the act and the proposed amendments and the impact they will have on the health care of psychiatric patients in public hospital settings.

"Attached is a brief overview of some of our concerns with respect to the amendments."

That is the end of the letter. I have not gone over all the comments with respect to the amendments, but let me say that the third paragraph of this letter indicates, from the perspective of the group writing to us, that there will be some impact on health care and psychiatric patients in public hospitals. I have not joined the amendments together with their critique of same. I share that letter with you, if you like.

Ms. Gigantes: Did they provide a "critique of same"?

Mr. Chairman: A critique in the sense of a one-page outline of eight items, which I will share with you as well.

Ms. Gigantes: Do I understand that you read us the letter so we would know that the OHA does not want us to amend or deal with the Mental Health Act?

Mr. Chairman: I do not think that is what it said. It recommended "a thorough review of the act" prior to the passing of any amendments.

Ms. Gigantes: Perhaps you will help me understand that. It means that the OHA is telling us not to consider any amendments to the Mental Health Act in Bill 7, to postpone the whole thing until there is a complete review of the Mental Health Act.

If I am correct in that, the OHA is suggesting, notwithstanding the equality rights section of the Charter of Rights and Freedoms, that we not deal with matters which may very well be the cause of appeal and challenge in Ontario. We have a good, strong sense that the equality rights section of the charter would mean that existing Ontario law is inadequate.

I would just like to make that point. The reason we are dealing with mental health amendments in Bill 7 is because we have a strong sense--as has the Ministry of the Attorney General, certainly--that there are sections of our mental health legislation which are an infringement of equality rights under the Canadian charter. We have to bear that in mind.

It is all very well for the OHA to ask for a complete review of the Mental Health Act, but that is not what we are into here. What we are into is trying to bring our legislation into conformity with the charter.

Mr. O'Connor: I find it remarkable that my colleague describes the amendments she has introduced as affecting not the treatment of patients but legal rights.

The reduction of the requirement to assess somebody from five days to six hours surely affects the treatment that patient receives. The transfer from one facility to another is surely designed for the purpose of affecting his treatment, either upgrading it or downgrading it, or whatever. The imposition of restraints, chemical or otherwise, surely has to do with the treatment of a patient. Each and every one of the amendments deals directly with the treatment of patients in our mental hospitals.

During our public hearings, we did not hear from the medical profession as such with regard to the Mental Health Act and the need for amending it, or otherwise. The reason for that perhaps was that the amendments tabled by the New Democratic Party were done so either after the end of our public hearings or very shortly before. The medical profession, the psychiatrists in particular, simply did not have the opportunity to react and to come before us with the bill. Quite naturally, and expectedly, neither seeing nor hearing of any amendments before the committee, they assumed there would not be any amendments, certainly not of the nature proposed by the NDP. Thus they did not get together their material and come before us.

Given that set of circumstances and the substantive nature of the amendments I feel it is only natural that we should welcome these doctors most readily and hear their views for 20 minutes or half an hour. I predict that what is going to happen is that we will debate the issue of whether or not they should be heard far longer than it would take to hear them.

As you have indicated, there is a long list of speakers. I am sure we will get back and forth and around the room two or three times. We would save everybody a lot of time if we were to simply use that time to hear them out, because they are the ones most involved in the mental health field in Ontario. I am sure they can give us information that will be of value in our subsequent deliberations.

Mr. Chairman: Your comments are well taken. If we are going to make the best use of our time I would ask all the speakers to restrain the rhetoric as much as possible. I do not mean that in a personal way because you are the next speaker, Mr. Cooke. I only mean that in a very global sense to all of those who are to follow. Mr. Cooke, you now have the floor.

Mr. D. R. Cooke: When we were dealing with the first procedural matter I was wondering what the Hansard reporter would think when typing up the Hansard on that matter.

On this matter, I would support Mr. Partington's suggestion. The proposal to amend the Mental Health Act in this area is one of the most, if not the most, sensitive proposals we have to consider. I do not recall hearing anything very clearly put to us from the professional viewpoint.

We heard from the group, On Our Own. They had a very strong proposal to make. It was received with some empathy. However, a number of us in this room have had professional situations in which we have had to spread out difficult problems of trying to balance mental health problems with civil liberties. I think we need all the help we can get.

I notice Dr. Henderson is here. He has indicated interest in providing us with any help and assistance from a professional standpoint that the committee might be interested in hearing. Initially, I would support Mr. Partington's proposal.

Mr. Warner: I wish to speak to the procedural aspect of this. In all respect, it is normal procedure in committee that once we have heard public presentations, and the committee goes into it clause by clause, the matter is left entirely to the committee. We do not normally then entertain a reopening of the hearings unless there is some extraordinary reason.

When a committee does that, though, I take it as a singular event; that is, it does not necessarily set a precedent for anyone else coming before us on any other matter.

Mr. Chairman: I think I made that clear.

4:10 p.m.

Mr. Warner: Except that I heard the little section in there about some group that had comments to make on a section which was already passed. First, I take that to be an entirely separate matter which we can discuss at some other time. If the committee decides now that it would like to entertain some individual who is not a member of the committee, it does not affect whatever this other request is. It has no bearing on that. That needs to be clearly understood because if we are about to depart from the normal procedures, it is solely on this event.

I can understand there are compelling reasons. One is that we are now dealing with a section which is very difficult and a section on which few of us have the expertise, although we asked for and I think there are people from the Ministry of Health present to assist us in our deliberations. That is very much appreciated, and we will have at least one member of the assembly with us this afternoon who has some background in this field.

I do not wish to appear to be unco-operative in any way. If the members feel more comfortable having someone available to answer questions as they go

through it, fine. The other side of it is passing legislation and not being comfortable with what you have done. That is not a good thing. I make the point very strongly that if the committee decides it is going to entertain some advice from people who are not members of the assembly, this does not in any way set a precedent for any future meetings of this or any other committee of the assembly.

Mr. Chairman: Could I respond briefly from the chair's standpoint? There is nothing out of order in what we are doing. It is unique and unusual, but the committee is all-powerful with respect to whether it wants to reopen a particular clause, go back or whether it decides to hear from individuals after the hearings have been concluded. That part is in order.

The only reason I raised the issue of the other group was that I have received a phone call from them indicating that they had some concerns about the other issue, and I have made no promises to them whatever. Perhaps a member of our committee has heard from them as well and wishes to make a singular submission with respect to their argument.

What you are saying is absolutely correct. We are dealing with only the issue of the psychiatrists now as it relates to Bill 7 and nothing else.

I have to take them in order, if I might. Dr. Henderson is next.

Mr. Henderson: As Mr. Cooke says, I am happy to be here and I will help in any way I can. I want to say, however, that I am a former practising psychiatrist. It has been some years since I have practised in a general hospital setting, so I would want to say there is some comfort and relief to me to know Dr. Saunders and Dr. Hoffman may have an opportunity to say a few things.

For what it is worth, it seems to me that the kinds of amendments that are being contemplated and proposed would very much affect treatment in ways that may not be so apparent. I can say that from my years in general hospital psychiatry, when amendments to the Mental Health Act came down, they had far-reaching ramifications and spinoffs in the actual clinical conduct of treatment that I am sure were not foreseen and perhaps would not even have been foreseeable by us until we spent six months or 12 months getting used to them and seeing what they translated into in practice.

Just to take a couple of obvious examples, whether it is 120 hours or six hours really does make quite a difference to the way you go about doing something clinically. Whether you talk about chemical constraint or mechanical constraint, generally, the issue of restraint has far-reaching clinical spinoffs as well.

Quite apart from the direct effect on treatment, I think it is important to hear from practitioners who can talk about some of the indirect spinoffs that can occur. For example, the whole approach to the hospitalization and treatment of involuntary patients can change according to the nature of the legislation bearing on the process. You can find yourself, with the best of intentions, creating a setup that does not work because clinicians, as a result of it, simply shy away from that area of practice. I have known that to happen.

The business of getting second opinions in communities that are geographically isolated and where you have to reach 100 miles to find a consultant can be horrendous and time-consuming and very difficult if the consultant is already very busy in his own community.

I think it would be valuable to hear more clinical input, because I really believe the types of amendments that are being talked about will have very far-reaching clinical ramifications.

Mr. Chairman: Thank you. I have Mr. Partington, Mr. Polsinelli and Ms. Gigantes.

Mr. Polsinelli: You can take me off the list.

Mr. Chairman: Totally off the list?

Mr. Polsinelli: Just on this issue.

Mr. Chairman: On this issue? All right.

Mr. Partington: I want to reiterate my reason for moving the motion. To answer Ms. Gigantes clearly, every amendment deals with patients' rights in treatment. They are substantive, and we would be grossly negligent if we did not hear from the people who deliver the treatment. After all, they are most accountable. If we are talking about accountability, it is not the judges or members of the review board, but the doctors who have to deliver the service, and we have to hear from them.

Ms. Gigantes: On Mr. Partington's point, both he and Mr. O'Connor may be confusing medical treatment with treatment under the law. I put it to the committee that we are dealing with treatment under law and the provisions made under the law for the rights of psychiatric patients within our medical system. We are not dealing directly with medical treatment. We are not telling anybody how to carry out treatment. We are dealing with matters such as five hours against 120 hours. We are talking about matters affecting the rights of a psychiatric patient who has been involuntarily committed. Nowhere in our criminal law do we have a right to lock anybody up for 120 hours with no assessment, no charge, nothing. We are talking about treatment under the law.

I am sure it will make a difference to the habits of psychiatrists who practice in Ontario in their application of medical treatment. There is no doubt about that. We are talking about the framework of treatment. We are not talking about the nature of treatment but treatment under the law. These are two very different matters, which are getting confused in loose language.

If, as seems likely, this committee decides to open clause-by-clause discussion on these amendments to experts familiar with treatment as medical professionals, then I will make two proposals that I ask the committee to consider.

First, we deal with matters not in terms of presentation but discussion on each clause. In other words, we follow an orderly process, clause by clause, and try to separate the elements into their subject areas. For example, several amendments will affect the process of admission and several will affect the status of a patient concerning appeal. I would like us to look at these items subject by subject.

Second, if we are to hear expert opinion on why a proposal should not go forward, I would like the committee also to hear expert opinion to the contrary. I also ask the committee, if we are to hear from medical professionals, that we also hear from people involved professionally in patient advocacy and expert in psychiatric law and the practice of mental health medicine in Ontario as it affects equality rights of psychiatric patients.

4:15 p.m.

That is the only way we can proceed because, as a lay member of this committee, I am not in a position to argue with a doctor of psychiatry, with an expert point of view, without listening in conjunction with that to somebody who has looked at it from the patient's point of view in the context of the Charter of Rights.

There are three people here who could add to that discussion and whom I would like to invite if we are going to hear from Dr. Saunders, Dr. Hoffman and Dr. Henderson. I would like to invite Carla McKague from Advocacy Resource Centre for the Handicapped, David Giuffrida from the Psychiatric Patient Advocate Office and Peter Bartlett. That would be my proposal.

Mr. Chairman: The question of whether others are invited to participate in the debate and appear before the committee is a second part. To keep the main motion clean, I would prefer not to take it as an amendment. However, if you wish it as an amendment to expand our terms of reference to include the other gentlemen whom you have just identified, I will call your amendment first.

Ms. Gigantes: It is not our terms of reference; it is our process here.

Mr. Chairman: You are suggesting a process and that is what I am putting in the form of an amendment, if you want that. It certainly is not the main motion; it is in addition. The main motion speaks specifically to the Ontario Hospital Association and the group identified by Mr. Partington. That is the motion I will call. If you have an amendment which includes the other group, I will call that first.

Ms. Gigantes: Go ahead as you please. One way or the other, we can deal with it.

Mr. Chairman: You have to move it. Do you want to move it as an amendment or as a separate motion?

Ms. Gigantes: There is no need for me to move it if we do not decide to go ahead on the first. Let us deal with Mr. Partington's proposal.

Mr. Chairman: That is what I would suggest. In fact, I think I did suggest that.

Ms. Gigantes: Fine.

Mr. Chairman: We will deal with Mr. Partington's motion, which is to hear from Dr. Saunders and his delegation with respect to Bill 7, the Mental Health Act and psychiatric patients.

Mr. Callahan: On a point of clarification, Ms. Gigantes suggests we go through the amendments and presumably the psychiatrists and then the people who are not psychiatrists will address us as we go through each amendment. Unless the psychiatrists have pencilled off their books for the balance of this month at least, that is not realistically possible.

I appreciate your concerns and I agree that this is a very significant act, but a better approach might be to allow them an opportunity to see the amendments and comment on them in writing for each member of the committee.

Then we would have that before us and be in a position to deal with the amendments in their absence. I do not know whether the doctors or the laypeople have enough time to sit around here with us and go through the amendments one by one.

Ms. Gigantes: Unless we have an opportunity to question them about their submissions to us, what is the point of the process? You would put us in a position where we either take their word for it or we do not; we either understand or we do not. We could not ask any questions.

Mr. Callahan: Let us assume Mr. Partington had not brought forward the request that the doctors be able to address us and in return you had not brought forth the amendment that the laypeople be entitled to address us. We would have had none of that; we would have gone ahead and dealt with the amendments on our own. All I am saying is that, as a practical matter, I do not see how we could possibly keep these people on tap to go through it amendment by amendment.

There are numerous amendments by yourself and a number of government amendments. Reading those into the record, which I am sure will be terribly stimulating to all those in attendance, will probably take the balance of today and perhaps part of tomorrow. We would then be into next week. I do not think these people have the time to do that; so as a practical matter, we are voting on something that may pass, but it is going to have a very impractical result.

Ms. Gigantes: It has not been moved yet.

Mr. Callahan: I will wait and see what happens.

Mr. Chairman: Mr. Hennessy has indicated his wish to speak, and stretching the rules a bit, I will allow Mr. Partington one further point.

Interjection.

Mr. Chairman: Are you going to withdraw it?

Mr. Partington: I am fine now.

Mr. Chairman: That has simplified the whole thing.

Mr. Hennessy: My suggestion is to put both parties in the same resolution. Instead of arguing back and forth, let everybody have a say in the matter and then we will have no problems.

Mr. Chairman: Okay. Do we have a motion from Mr. Partington that is clear enough that we can vote on it?

Mr. Partington moves that we now agree to hear from Dr. Jack Saunders and Dr. Brian Hoffman.

Mr. Chairman: I was watching for any sign of life from Mr. Warner and Ms. Gigantes. How are you voting?

Ms. Gigantes: I will vote against it because I think we should proceed.

Mr. Chairman: Mr. Warner, you are sticking right with Ms. Gigantes on this.

Motion agreed to.

Mr. Chairman: With a minimum of discussion, could we then go to Ms. Gigantes? Do you wish to bring up the second part of this issue?

Ms. Gigantes: Yes. I would like to move that we invite the three people I had introduce themselves to the committee to make comments also on the amendments. I will leave it as simply that. I do not know the process under which we are going to operate here. I do not know if Dr. Saunders and Dr. Hoffman will make a statement or whether they will join in the clause-by-clause discussion.

Mr. Chairman: It would be inappropriate for any group to join in the clause-by-clause discussion. Quite frankly, as chairman, I think we should get the input in quite the same way as we do during the course of the hearings. Then we can allow the good doctors either to remain and listen to our debate or to leave as is their wish. Mr. Callahan made some appropriate points. Quite frankly, it is out of order. We could be called into some criticism and questioning if we allowed any group to get involved in the clause-by-clause debate.

Ms. Gigantes: Then my motion is quite simple and straightforward. Whatever process Dr. Saunders and Dr. Hoffman are invited to join, we should invite at least two spokespeople from the groups I have mentioned also to make whatever appropriate interventions are required.

Mr. Chairman: That being the motion, Mr. O'Connor wishes to speak to it.

Mr. O'Connor: I have a question as to whether any one of the three or the groups they represent have appeared before us or made a presentation to us during the previous public hearing section of the committee hearings. If they have, I suggest they have had their shot at it and I would vote against their association or group being permitted to speak a second time. If they have not, I will support Ms. Gigantes's motion with respect to those parties or groups that have not yet spoken to us.

Mr. Chairman: Could you clarify that for us, Ms. Gigantes?

Ms. Gigantes: We have had submissions, but I put it to you that as we head into clause-by-clause debate, with all this rumour of how our medical professionals are upset with the clauses we are considering, it is very important for us to refresh our memories about what the groups that have supported these changes have had to say. Anything else would be leaving ourselves open to the last influence we had, which would happen to be to be one side of a discussion. I do not think that is a good way to proceed.

Mr. Chairman: Are there any further comments from the members of the committee?

Mr. O'Connor: Who has made presentations to us?

Mr. Chairman: We did not get clarification on that. Could you gentlemen indicate? I know you have spoken before, sir, but could you clarify?

Mr. Giuffrida: The Psychiatric Patient Advocate Office of Ontario has made a submission to this committee.

Ms. McKague: The Advocacy Resource Centre for the Handicapped has made a submissions on the Mental Health Act, which addressed a number of the issues in Bill 7. Only one projected amendment to the Mental Health Act was discussed in that submission.

4:30 p.m.

Ms. Gigantes: It was the first submission that was heard, I believe. It goes back about two months ago.

Mr. Chairman: I received that clarification. Did Hansard pick that up at all? Is there anything I can do to help you in connection with that? Do you have sufficient for your requirements? I want to make sure we get it on the record and that it is clear. If anyone calls back to find out what we actually discussed, it will be there for everyone to read three months from now when we get the Instant Hansard.

Mr. O'Connor: For the assistance of Hansard, I think the indication from the three persons was that two of them had made presentations previously and one had not.

Ms. Gigantes: No. That is not correct.

Mr. O'Connor: That being the circumstance--I think I have the floor.

Mr. Warner: That is not what was said.

Ms. Gigantes: That is not correct.

Mr. O'Connor: Sure it was.

Ms. Gigantes: No.

Mr. O'Connor: Two had made presentations and one had not.

Ms. Gigantes: No. The Advocacy Resource Centre for the Handicapped submission was made by David Baker, if you will remember, on the first day of our public hearings, which goes back something like three months.

Mr. O'Connor: Which makes my point. Two of the groups have made submissions and one has not.

Ms. Gigantes: You said "persons."

Mr. O'Connor: Persons or groups. I was careful to say that on my first time through.

Mr. Warner: It dealt primarily with other subject material.

Ms. Gigantes: Which we will be coming to.

Mr. O'Connor: Mr. Chairman, if I can deal through you in this matter, the point is that two of the groups have been before us and had the opportunity to make whatever submissions they wished. Apparently, the first time through one of them chose to deal only very briefly with the Mental Health Act amendments. We cannot dictate to them the subjects they are to deal with. They are well aware of Bill 7, what it says and what amendments were being proposed, and they could well have made submissions with respect to the Mental Health Act amendments at that time.

I am not overly strong on this point, but I want to be fair. We opened up the discussions to the two doctors because they had not had the opportunity. They had not seen the amendments; they had not been tabled until after the public hearings. The groups that are here now are not in that position. At least two of them have had the opportunity to make presentations to us. For that purpose, I suggest we split the three and go into them separately.

Ms. Gigantes: There has been a mistake here. I tabled amendments to those of the Attorney General (Mr. Scott) several months ago, way before public hearings began.

Mr. O'Connor: Not the ones we are dealing with now.

Ms. Gigantes: There are additional ones, but those have been on the public record for a long time.

Mr. Callahan: I move we call the question.

Mr. Warner: Yes, call the question.

Mr. Chairman: The chair has been directed to call the question. I will do so. All those in favour of Ms. Gigantes's motion? Opposed?

Motion agreed to.

Mr. Chairman: Ms. Gigantes' motion is carried, and the other groups in total will also be allowed to speak before the committee. The chair wishes to make it clear these will be submissions as in the normal form of hearings, not clause-by-clause. Please do not proceed on a clause-by-clause basis or attempt to do that. I will call you out of order if you do.

Mr. Callahan: On a point of order, Mr. Chairman: Have the groups that are about to address us seen all the amendments, and will their comments be confined to them?

Ms. Gigantes: He just told them not to address the amendments.

Mr. Chairman: No, I have told them not to address them clause-by-clause. They can make their submissions in any fashion they wish.

Mr. Callahan: We could hear from soup to nuts here, although that will be--

Mr. Warner: We will find out, will we not?

Interjection.

Mr. Chairman: Is it agreed by the members of the committee that the normal rules will apply with respect to the length of the submissions so we have some sort of parameter on our discussion?

Interjection: Agreed.

Mr. Chairman: It is to be presumed then that Dr. Saunders will be representing a group, and that will allow him one hour. Is that correct? Did we not allow one hour for groups and half an hour for individuals?

Interjections.

Mr. Chairman: After all that participatory democratic discussion with respect to appearances before this committee, I would like to invite Dr. Saunders and Dr. Hoffman to come forward. As you can see, gentlemen, we are delighted to have you here with us today. We welcome your comments and look forward to hearing what you have to say with respect to Bill 7.

DR. JACK SAUNDERS

Dr. Saunders: Thank you very much for allowing us this opportunity. When we prepared to attend today, we had not expected to make a presentation. Therefore, I guess we might say this is a bonus and an opportunity to talk to the committee. I appreciate the difficulties the committee has in doing something unusual; so we doubly appreciate the opportunity you are giving us.

I suppose it might be fairer if other groups need to be heard from. I was interested to hear about that letter from the Ontario Hospital Association, because it is very concerned about the whole matter of any changes in legislation that are going to affect the operation of a hospital. Although I am not in a position to say so, if the committee is going to be fair and hear from the people who have to make the system work, it may have to consider hearing from the OHA as well.

We have not prepared a brief, and we did not prepare ourselves to make any prolonged presentation. When we first looked at Bill 7 some time ago as it was presented by the Attorney General, dealing with the Mental Health Act and a couple of other sections that affect medicine, we did not have any problem with it and did not feel there was any need for us to make comments or submissions. It was not until very recently, when we received a copy of the proposed amendments to the Mental Health Act beyond those in Bill 7, that we became quite concerned about what was being proposed and the ultimate effects it would have on patient care in this province.

The document we have made available, which is being handed out now, is not of the calibre or quality of Ontario Medical Association briefs. It is a working paper we developed over the past weekend to give us some direction as to some of the areas of concern. In using this, I hope the committee will identify it as just a working paper. In it, we have made some comments and raised some questions that are not clear in our minds.

Although Ms. Gigantes may not recognize some of the amendments as affecting patient care, there is no question in our minds that they would very seriously affect the care of patients and our ability to deal with our patients in the way that we feel is important in allowing them the opportunity to regain their health and contribute to society.

We do not plan on going through it clause by clause. Both Dr. Hoffman and I are prepared to stay for the rest of the afternoon. As you look at the clauses, if questions do arise that you would like us to respond to or clarify as far as our position goes, we will be pleased to do it.

4:40 p.m.

Dr. Hoffman, who is a practising psychiatrist at the Clarke Institute of Psychiatry, will run through some of the major concerns we have in this legislation.

Our process in dealing with matters such as this is to bring together a group of experts in different areas of the province and in different settings to allow us to obtain an overall picture of problems that might be perceived. That is one of the reasons that delayed us in responding. It is not easy to get physicians together at a moment's notice, because they are all very busy practitioners. However, we did bring a group together. Our deliberations and the revelations from our discussion are revealed in this working paper.

I have one other comment, because we do believe this is momentous legislation if it does enter into the Mental Health Act. When we are considering matters that are going to change considerably our way of dealing with patients, we believe nobody should rush into these things. The committee might even feel it useful to set aside the amendments and consider them over a period of time so we can give them due consideration. Even after bringing a group of experts together, there are still a lot of unanswered questions in our minds about the meanings and implications of this legislation. I advise caution to the members of the committee so that we do not go marching down a road that may end up to the disadvantage of the very people we are all trying to help.

DR. BRIAN HOFFMAN

Dr. Hoffman: I would first like to identify myself. I find it hard to consider myself speaking for all psychiatrists in the province, because I am not a private psychiatrist. I am on staff at the Clarke Institute of Psychiatry and at the faculty of medicine, where I teach.

Let me go back a moment. There are 17,000 physicians in the province; only 1,000 are psychiatrists. The psychiatrists have not reviewed this legislation. I am on the executive of the section of psychiatry of the Ontario Medical Association. We last met in mid-April. There was no word of this. We had contact with the Ministry of Health. That executive, which speaks for the profession, has not met regarding this. When it crossed my desk on Thursday, I immediately forwarded it to the chairman. He is in London, Ontario.

We have one other major political body, the Ontario Psychiatric Association, which is concerned only with psychiatric issues. I am also on the executive of that association, because I am the scientific chairman of the program committee concerned with education. That committee has not seen these amendments. On Thursday, I forwarded the information I had to the president of that association.

I feel quite strongly that major, substantive changes, not just to the legal rights but also to the treatment issues, should not be made until after adequate consultation with all parties--patients, legal, certainly psychiatric people--and this has not been done. I came here today on the invitation of the Ontario Medical Association, not having had a chance to discuss things with a wide range of colleagues.

I disagree that the New Democratic Party amendments do not affect treatment. In psychiatry, treatment is not something you give a patient. Treatment is the relationship between a psychiatrist and his patient. It is absurd to suggest that now one uses restraints, now quickly one must conduct one's interview or what relatives can be brought in and how quickly does not influence treatment. All those things will influence the nature of the psychiatrist-patient dialogue, contract and therapeutic outcome.

I am very pleased you can see that psychiatrists have a pressing need to

address the narrow issues in the law as you are debating it, because it affects the larger, broader treatment issues.

I understand something about civil rights of patients as well. I have recently written an editorial for the Canadian Psychiatric Association called, The Canadian Constitution and How It Will Affect Psychiatry. That is probably why I am here today. I advocate that one can carefully look after civil and treatment rights simultaneously and not necessarily allow one to completely override the other.

In the past, our society has not been concerned about civil rights. Now it is, but civil rights should not become the penultimate or the only principle on which we govern our society. There are other principles. When talking of the mentally ill, it is to be free of mental illness, to get the necessary treatment and to have appeals to that treatment in whatever civil rights mechanism you want to develop. It is possible to protect civil rights by allowing appeals without destroying treatment. It may interfere with it. It is possible to allow a physician to treat and still protect rights. I want to address you on this basis. I want to look for ways that allow us to treat patients to get them better and simultaneously ensure their civil rights.

First, I agree in general with Bill 7. I did not have any trouble with it although I would love to have my own copy that I could spend some time with. I have not received it yet. In general I have no trouble with the Ministry of Health recommendations. The Ministry of Health representatives approached both the executives I spoke of, discussed some of the general principles, heard our side and then wrote their own laws, some of which create difficulties with us. At least there was a consultation process as opposed to this last set of amendments that I and my colleagues have only become aware of in the past 10 days.

Six areas require close examination, predominantly around the NDP amendments. The first is in section 1. I will not go through it section by section, but will refer to global areas. You will see the purpose of this. It is the area of restraint.

4:50 p.m.

To redefine restraint as mechanical restraint and to take out the words "physical" and "chemical" is a horrendous change. Picture what I see once or twice a week--a patient breaking furniture. He is not hurting himself or anyone else yet. Picture a patient continually grabbing another woman's breasts. Picture a patient yelling and screaming. Unfortunately, I see some serious mentally ill people who can yell and scream non-stop for 72 hours, waking up every other patient on the floor. Under this definition of "restraint," our only restraint would be mechanical: straitjackets and four-point restraint. Four-point restraint is tying two arms and two legs to a bed.

During the past 30 years, in the time I have practised, that form of restraint has sometimes been used, usually for a few hours. Then we use medication that sedates people, calms them down, takes away the voice of the Devil or Satan telling them to kill people, takes away the feeling that they have been implanted with electrodes by communists from another province and that they are trying to escape these electrodes--all imaginary, all psychotic.

Our usual method of handling this situation is first interpersonally, with attention, with caring, with sharing, with being there. If necessary, we

use staff to hold a patient in a chair--physical contact. We can do that for an hour or more. It is obviously exhausting for four people to hold someone, but it is like holding a child; sometimes it is perceived as a hug and a caress, and then things settle down. If necessary, we will use medication, chemical restraint.

We have a number of chemical restraints, some of which are sedating and most of which are simultaneously antipsychotic: that is, they take away delusions and hallucinations; they counteract the psychotic effects of hallucinogenic drugs and so on. To go back to the 1600s, when people were locked in prisons with chains and straitjackets, is nothing short of bizarre.

I want to point out that we use chemical restraints not only to protect the person but also to protect staff from being hurt and to protect the patient's reputation. Next week I am giving a talk to another association that may be interested in these amendments. They are family members and they have asked me to talk about the effect of mental illness on healthy siblings.

Can you picture what it would be like if you had a mentally ill daughter or son and could not take another daughter or son in to see that sibling because he or she was in four-point restraint? What would it do to a brother to see his sister in four-point restraint?

Now we can at least sedate people, use antipsychotic medication, which often does not even sedate people; it just takes away their psychotic stuff, and then you can get on with the treatment. We do not just sedate people, although that is sometimes the effect. But at least visitors can come in and you do not get the feeling that your sibling, your brother or your sister is animal-like and has to be restrained like a dog. The medical profession, and psychiatrists in particular, would have a lot of animosity towards any government that tried to put us back 200 years in terms of restraint.

Mr. O'Connor: More animosity than you already have towards the government?

Mr. Callahan: He did not say anything of the kind.

Dr. Hoffman: The second set of principles I would like you to address is in sections 12 to 14, and that is the time period of assessment, which the New Democratic Party has recommended be six hours.

I understand the dilemma in trying to make the Mental Health Act compatible with areas of criminal law. Nevertheless, this is not criminal law; we are talking about mental illness now. Psychiatrists are not detectives; we are not police officers. We have only a certain number of tools with which we can look at the problem of the patient in front of us.

We debated this for a long time in 1978, when we went through the original changes to the Mental Health Act. First, I do not believe that six hours is sufficient time. Let me give you some examples. A man was brought to the Clarke Institute of Psychiatry because he put a brick through a bank window. He was trying to make a deposit of \$10 to Harold Ballard's account. He was ranting and raving, and the police came and took him home. The family said: "He is destroying the house as well. Can you not do something?" They brought him to the Clarke Institute.

What do we want to do? We want to talk with him and observe him. What happens if he is mute? Many of our patients will just sit there and glare because they know it is six hours. They will outwait us.

We want to talk to the family. Family members have been up all night for weeks and have already visited three emergency departments without the patient, trying to get somebody to do something. They are exhausted. They may be out of town. They may be at the theatre or away for the weekend. We want to talk with the family. We want to talk to the general practitioner who knows the patient. We want to talk to the outpatient psychiatrist. We would like the psychiatrist to do something more than rubber-stamp.

From another angle, under the current system a person is brought in on a form 1 and is kept for five days. Of those patients, 75 per cent are then released. They are not discharged; I mean they are released from the certificate. They decide to stay voluntarily, as either an inpatient or an outpatient. At least in five days you can form a relationship with some patients. Treatment is not something you throw at the patient; treatment is the contact between physician and patient. So 75 per cent are reversed and the patient stays voluntarily, even after he was dragged, pushed and put on a form 1.

At least it gives us time to talk with the patient, observe him and have nurses and social workers do their work so that we do not make our decisions in isolation. Nowadays psychiatrists do teamwork on inpatients. We are talking of a team or holistic approach to the patient. We need time to make a relationship.

Where do you saw off? That is your decision. My point is that shortening the time does not protect civil rights. What will protect civil rights is the right to appeal. Bring in an appeal earlier or go to a review board earlier, but do not interfere with treatment or with the relationship between the psychiatrist and the patient. Some of my colleagues will say it is already interfering with the treatment, because as soon as you have to go to review boards, suddenly you have yet another person coming in on the relationship. Nevertheless, that compromise is probably inevitable if you want both treatment rights and civil rights.

5 p.m.

The third area I have for you to consider very specially is the area of transfers. Transfers from one unit to another are done for a multitude of reasons. These amendments suggest that transfers are always done as a punishment for someone who has made the staff mad. That is not the commonest reason for transfer by any means. As a staff psychiatrist, I have 23 women on my team who may be choked. I have had nurses who have been held hostage with a knife to their throat. I have had a nurse locked in an office with a patient who tried to attack her with an aerosol hair-spray can towards her eyes.

It is really tough for staff to work under those conditions. Transfers in those conditions are not punitive. In fact, they try to give the staff some breathing room, try to make sure they stay therapeutic with the other 29 patients on my floor and try to get another team that might be therapeutic with this very patient.

I have transferred very few patients, because my tendency, and that of most psychiatrists, is to hang in there to the bitter end, and you to get your staff to become devoted. Where a transfer is necessary, it has to be made in looking at the patient's needs, the staff's needs and the treatment needs. To give the patient the sole ability to block that transfer with an appeal could be very unfortunate because I think it would mean the unnecessary use of drugs or restraints on that particular unit.

Dr. Shugar at the Clarke Institute, with social workers, has done a study of transfers. All patients are against transfers to begin with. At the end of the transfer, many patients find them therapeutic for reasons that are quite complex.

Transfers are sometimes administrative. We have crisis units. A crisis unit has six beds, and the idea is that you get people back to the community quickly, but if you have to transfer someone upstairs, you do. That frees up the bed so that it can then hold four other people during the next four weeks. To have a crisis unit blocked shuts down the system.

It is a touch of madness to suggest that someone cannot come in with an overdose and get intensive care, then be transferred to the psychiatric ward, which is a more secure unit. To suggest that you might certify someone but then not be able to send him to another hospital where there is a bed when your hospital does not have any beds is bizarre. To suggest that a patient in Kapuskasing who comes down to the Clarke and bounces in there could not be transferred back to Kapuskasing is bizarre when his family doctor and his own psychiatrist are back there.

I have trouble with transfers. I think you are going to have to rethink this to make sure that administrative and treatment transfers are not interfered with and that a patient has the right to appeal but not to block the transfer. Maybe it has to be done after the fact or whatever. Those are some of the concerns I have about transfers.

Mr. Chairman: Is your question specific--

Mr. Warner: No; I will hold.

Mr. Chairman: Mr. Warner had a question and I wondered whether it was on the point you were discussing. Please carry on.

Dr. Hoffman: Fourth, availability of records: Records in a psychiatric hospital are used for a purpose different from that of records in a school or, I presume, in a prison. They are meant to help with treatment: psychological treatment, family treatment, group treatment and obviously biological treatment and rehabilitation as well. The point is that there is a lot in the records that is meant to be communicated to my staff who work on evenings and nights: "Be careful of this patient's suicidal impulses." "Be careful: We talked of the incestuous relationship between this patient and his father when he was a child, so watch him tonight because he is pretty angry at big Bob over there." My notes are primarily meant to communicate with staff.

Totally open access to the record can be harmful to patients at times. When they are well, they may not agree that incest or homicidal rage was an issue. It may be harmful to families, because the family may come in and the mother or father may talk of his or her extra-marital affairs, their own incestuous relationships and so on.

Therefore, we have some difficulty. Nevertheless, from a civil rights point of view, some accessibility is required in a public institution, and you should look carefully at the Ministry of Health recommendations.

The issue of competency begins around section 35, which essentially says that a physician cannot assess competency. We do so in every other area of medical practice. We do when a patient is in diabetic coma or has a head injury; we do when a patient is in delirium and is ranting and raving and

crazy because of insulin delirium, hyperthyroidism or cancer. In these cases we assess competency.

Why split off the mentally ill from the physically ill? Why split off psychiatrists from physicians in general? We are trying to destigmatize the mentally ill person. We are trying to say that we are going to treat this as a medical problem he or she has, and I say this in the broadest sense, medical meaning a bio-psycho-social problem. We want a psychiatrist to be seen not as a witch doctor but as a physician who has special training in the emotional disorders.

Doctors can assess mental status: hallucinations, illusions, delusions, flights of idea or grandiosity. Do you really want a hearing to decide on these issues, particularly the current hearing, in which laypeople outnumber physicians? Depression, various forms of agnosia and apraxia. I could go on. This is medical stuff, and I do not see why you would take that away. By all means, allow a patient the right to appeal that decision.

I have an additional problem with the area of competency because, as the New Democratic Party members know, they are bringing in yet another outsider. In the case of the psychiatrist trying to treat a patient, I said the treatment relationship already has a hell of a lot of outsiders intruding. There are legal rights advisers, patient advocates, family members, nurses and social workers. Suddenly you are going to have yet another person intruding on the relationship, and I maintain that it is intruding on the treatment.

As I see it, competency is a medical act. Allow physicians to do it. Allow patients to have their appeal mechanism. You will maintain the patient's access to treatment and his civil rights. The end result is to delay treatment if you get into that at all.

Thank you for your time. I am sorry I was not better organized, but that is not bad for me after four days on a long weekend.

Mr. Chairman: With respect to your presentation, do you have anything further? If not, I will turn to questions from the committee members.

5:10 p.m.

Mr. Warner: I very much appreciate your synopsis, doctor. It has been very helpful. I hope there is no misunderstanding about the intent of the proposals. It is fairly clear that there is a distinct and important relationship between a patient and his doctor. We are talking about psychiatry, but it does not matter what form of medicine it is; that is a sacred trust that is developed between a patient and his physician. Whatever changes are made in laws, we do not want to disturb that relationship.

Could I go back to the assessment portion? There are a couple of parts about which I need some information. Are the 120 hours currently under the act adequate in your view? Could the time be shortened, or should it be lengthened? How do you feel it has worked since it was instituted?

Dr. Hoffman: The 120 hours is a plausible compromise. The more time you have, the more complete your assessment. If you shorten it, you have a less complete assessment. Many patients can be assessed in fewer than 120 hours. A form 3 can be made out on day one, two, three, four or five.

Nevertheless, we are talking about the possibility that a patient will

be brought in on a Friday night, the possibility that a family member is out of town, the possibility that the general practitioner and the treating psychiatrist who know the patient do not return your calls immediately. We are talking about weekends, Friday, Saturday, Sunday, Monday. Why does everything always happen at six o'clock on a Friday? It does in this field; you can bet on it.

The answer is that you can shorten it to six hours and have a satisfactory assessment in 10 per cent of patients and lose 90 per cent of the most seriously ill. You can leave it where it is, which is a satisfactory assessment of 90 per cent of patients, and we only lose 10 per cent. It is workable. From Friday to a long Monday, at least you get a nursing report. A social worker is going to come in on it on Monday morning and then contact the family, and perhaps the family will return the call. At least I find this feasible. If you shorten it, you ignore the more seriously ill people. That is the dilemma.

Mr. Warner: I understand that the number of hours for assessment in Quebec is 48. Do you know what the experience has been there? Is that good, bad or otherwise?

Dr. Hoffman: No, I did not know that and I would love to find out.

Mr. Warner: As it now stands, with 120 hours, do you know if there is any significant difference in how the assessments are done, or what it is possible to assess, in major centres such as Toronto and Hamilton, versus the more remote communities in northern Ontario? For example, would the assessments require a greater length of time at any of the remote centres in northern Ontario, or does it not make any difference?

Dr. Hoffman: I am not sure that it matters in the vast majority of cases. What you want to do is sit and talk and look and be with the patient--me or my delegate or my nurse or my social worker--and call the family. We have special problems in Toronto because people can flock here from who-knows-where, and it is almost impossible to get family members. Toronto, at times, runs a more impossible situation. By and large, you need time to sit and be with a patient who is mute and just glaring at you or talking nonsense. You are not sure how much is show and game and how much is real mental illness. You need some time to sort it out.

Mr. Warner: I have a last question. In the submission we have from the Ontario Medical Association, point 5 on page 2 goes through the assessment thing as well. The last sentence reads, "In fact, a 6-hour assessment in many cases would be useless, and another method altogether would be required." Do you know if they are hinting there at going the route that I gather a lot of American jurisdictions have gone, and that is going to the courts first? Is that what the OMA is suggesting?

Dr. Hoffman: Could I have that document?

Mr. Warner: Sure.

Dr. Saunders: We are not suggesting any specific method. Certainly that is something we are aware of and have considered. We think it would be a sad day if we arrived at that point but we recognize that possibility. If we did put in six hours, we would have to take a long, hard look at the whole process. I hope that look would be in conjunction with other groups so we could sort it out.

Going back, and Dr. Hoffman mentioned this, we had many long discussions and debates over this time period a few years ago when the Mental Health Act was revised. It was only after many hours of debating that we arrived at the five-day point. Six hours, or some very short period, was suggested; 72 hours was suggested. At that time, I think it was a month in the previous act, so this was a considerable compromise, and we recognized the purpose of it.

One of the things you should look at in making a lot of changes is whether there are problems there. If there are, then certainly we should know about it and we should address the problems with all the appropriate people in making that decision. If no problems are identified, then you will have decide that if it ain't broke, don't try and fix it. Maybe that is the best way to approach this. We are not aware that there are any problems. I have not had any feedback of any problems arising out of the five-day detention period.

As Dr. Hoffman says, if you can get to the end of that five days, 75 per cent of those people become voluntary patients. In other words, in that period of time, they have come to recognize that they have a problem and here is somebody who is going to help them resolve the problem. That probably speaks more than all the words we could say.

Mr. Chairman: Dr. Henderson is next, then Ms. Gigantes.

Mr. Warner: I think the witness--

Mr. Chairman: You wish to respond as well? Go ahead.

Dr. Hoffman: I have two comments about the five days. In all honesty, to the degree that you shorten it, the second physician will rubber-stamp because he does not have additional information and because he has not had time to arrange treatment by a family doctor or a psychiatrist who might follow up. If he cannot arrange it, what he has to do is play it safe and do it, and then that is two weeks.

I believe that shortening it does not maintain civil rights. All you do is quickly get into the two-week thing and you would be better off allowing appeals, to whatever. If you are going to change the time, do that through the proper consultative process with the professionals of various groups. You should stay with the task at hand which is civil rights, not treatment issues, and this assessment period impinges on treatment.

Mr. Warner: That makes sense.

5:20 p.m.

Mr. Henderson: My supplementary problem is simply this: In addition to all that has been said about the need to talk to many people, to get information and synthesize it and so on, it is important to realize that a psychiatric syndrome or illness happens in a context. There are many factors that come from the patient, but there are many factors that come from the family and every other aspect of an individual setting. The very fact of hospitalizing somebody sets into motion a whole series of new factors that ultimately lead to a new equilibrium and new homeostasis.

During that period of rapid flux, rapid change and rapid reaction to different forces, often the fewer decisions that are made, the better. Although there are some decisions that have to be made, it makes a lot of sense to allow for as much flexibility as possible and for individualizing at

least the number, if not the nature, of the decisions that have to be made. If there is a problem to be corrected, I would come down on the side of finding some way, such as a peer mechanism or something, but not an arbitrary imposition of a very much shorter period than the 120 hours that exist now.

I say that in sensitivity to where these amendments are coming from. I have had a lot of difficulty as a practising physician and psychiatrist over the years, as I think Dr. Hoffman has, in struggling with this issue of, on the one hand, freedom and liberty--and believe me, these are much more than just buzzwords for me--and on the other, the need for care and health. It is a heck of a dilemma in many instances.

I feel quite certain that these amendments are well conceived in the sense that they are responding to real issues in the whole process of getting help to people. I just have some concern, and Dr. Hoffman has expressed so very well, that if we look at the letter of the amendments rather than the spirit of them--I have much less difficulty with their spirit and in some instances I agree with it--they may have consequences that are not foreseen and could quite undermine the very good spirit in which they are intended.

Ms. Gigantes: I was around for the 1978 review. I was a relative freshman--freshperson--member of the Legislature at the time. It has been a long time since I have been through this act, clause by clause. Certainly, following on what Dr. Henderson has suggested, it is important to look at what these amendments I have placed are attempting to achieve. In some cases, there may be room for discussion and change around some of them. That is something I am quite willing to contemplate.

While you are here, I have a couple of questions that will help me to find out about some of the major areas that have been raised in your presentation. One relates to the assessment process. You can describe it in much more detail than I can, never having been through such a process; neither am I aware that I have ever known anybody who has been through such a process. What we are talking about is a patient who is brought to an institution or to a doctor, and the decision that has to be made in this assessment, which is a technical term, is whether the patient shall be involuntarily committed. Am I correct?

Dr. Hoffman: Right.

Ms. Gigantes: That is the only decision that has to be made. We are not looking at a diagnosis of the patient. We are not looking at a full-fledged understanding of the patient's situation or an understanding of the relationship of the family or with society in general or one part of society in particular. We are not looking at what treatment may be in the future. We are only looking at whether at that moment a particular person should be found to need involuntary treatment. Is that correct?

Dr. Hoffman: Yes, with the proviso that--I am sorry, I will not repeat that. That is fine.

Ms. Gigantes: In most cases, that is probably not a terribly difficult decision to make. Is it? I cannot imagine that most of the patients who come to you for an assessment would require a couple of days of assessment for you to decide whether they are going to be involuntary patients. What we are really talking about in terms of time is the organization of the process, if I understand what you are saying.

Dr. Hoffman: No.

Ms. Gigantes: But we are agreed this is not part of treatment; this is a decision that is made. It is a technical, legal decision that gets made about whether somebody is an involuntary patient or may become a voluntary patient. You have to make up your mind.

Dr. Hoffman: You constantly separate the treatment from other issues. That is not something I do. Treatment begins on my first contact with the patient. It is relationship, and the psychological relationship is critical to everything.

Ms. Gigantes: Have you ever had people come to you whom you have decided do not need treatment?

Dr. Hoffman: Sure.

Ms. Gigantes: It is not part of treatment in that case; it is a simple assessment, and you decide there are no grounds for involuntary committal.

Dr. Hoffman: Those same people will say, "You have been very helpful," with no further treatment.

Ms. Gigantes: I am sorry, which same people?

Dr. Hoffman: The people for whom I will not prescribe further treatment. You divide things into assessment and treatment and you do not care to see it as a process. It is very much a process.

Ms. Gigantes: An assessment is a process we have set up.

Dr. Hoffman: An assessment for me is not a legal thing. An assessment for me is a medical act.

Ms. Gigantes: You are confusing a medical assessment which you make as part of your professional work with a legal assessment which you have to make too. If you are going to assess me as your patient, you are going to do it over a period of weeks and perhaps months of treatment.

Dr. Hoffman: The law tells me to assess a person. I do a medical assessment.

Ms. Gigantes: You do an assessment for a legal purpose, which is to decide whether there shall be an involuntary committal at that point.

Dr. Hoffman: I do not do a legal assessment; I do a medical assessment.

Ms. Gigantes: Yes, of course you do--

Dr. Hoffman: Thank you.

Ms. Gigantes: --but it is a legal process you go through.

Dr. Hoffman: It is a medical act.

Mr. Chairman: I have two responses. Dr. Saunders was first and then Dr. Henderson. I think they want to comment on Ms. Gigantes's point.

Dr. Saunders: I can try to clarify this for Ms. Gigantes. Physicians come from a completely different perspective than do lawyers or most other people.

Ms. Gigantes: I am not a lawyer.

Dr. Saunders: I appreciate that. We come from a completely different perspective, and there is no way we can separate assessment or something we do legally from what we do as caring physicians for patients who are presented to us. We cannot say, "This is just a legal matter and that is all we are going to do." We do not function that way and we do not wish to function that way.

As Dr. Hoffman says, as soon as you start into a relationship, that is the very beginning. Although you may not arrive at a final diagnosis, one of the things you are doing as you go through an assessment is trying to determine what this person's problem is and what treatment or therapy he needs or does not need. You cannot say this is just a legal matter and that is all there is to it.

If that is what you want, then these people should go to a lawyer or somebody else who says, "You should be in the hospital, because we are determining a legal position for you." They are the people who should send them into the hospital and say, "You have to stay there and take treatment," or whatever. Do not ask physicians to make a legal assessment, because we are not prepared, equipped or trained to do it. It is something we cannot do.

5:30 p.m.

Ms. Gigantes: You do make an assessment--

Dr. Saunders: We make assessments, yes.

Ms. Gigantes: --that meets the legal criteria required to place a person in involuntary committal. That is part of your role.

Dr. Saunders: Yes that is a part of it, but the legal part has been imposed on us through the law, which we are trying to follow. We cannot be the people who make the legal decisions. We follow the law as it dictates to us, but that is as far as we go.

Ms. Gigantes: What I was really trying to get at here was the question of the time. I would assume that in most cases this technical judgement that you make in your professional capacity as medical professionals, psychiatrists, under the law is an assessment to decide whether a person is committed involuntarily or whether a person is advised that perhaps voluntary treatment might be an ideal or perhaps told, "You should not be here at all." This does not normally take very long.

Dr. Hoffman: There is a cutoff.

Mr. Callahan: You can let them out sooner than that, if that is what you are getting at.

Ms. Gigantes: How long would the average case take?

Mr. Henderson: Could I make this comment? One ought to remember that in addition to the legal requirement on the physician, which is primarily, if not only, what we are talking about here, he or she has a requirement or

expectation of himself or herself with regard to diagnosis, treatment, responsibility to family and the nature of the facilities on the unit that he or she may be affiliated with. All that begins to get set into motion by the process of being called to see a patient in emergency.

For example, I recall seeing a patient a few years ago whose presenting symptom was putting his fist through the wall. It makes an awful lot of difference to my immediate decision about involuntary hospitalization whether he lives in a family where there are lots of support systems, he has been pretty well mentally well for a long time and this is an isolated occurrence after he went to the pub, had a few beers and got into a little argument, or whether he is living alone, has been a recluse, has been hallucinating for a long time, has no supportive relationships surrounding him and has a recent heart condition.

All of those things have to be assessed and I think one forgets, in looking at legislation, the legislation is not intended to take all that into account. It simply imposes a legal expectation that he make a certain kind of decision in a certain time frame. But an awful lot else has to go on, too, for him to be doing his job properly and we have to remember that.

Dr. Hoffman: If I can come back a bit, you are talking about the duration of a form 1. What the psychiatrist has in front of him is documented evidence from another physician, a police officer or a justice of the peace who thinks this patient is certifiable and wants an assessment. Some evidence has already been given to somebody. To counteract that takes some investigation. If you shorten the time, the psychiatrist is going to have to play it safe. That is the point I am trying to make.

Are you really going to release someone sent to you by a justice of the peace? The answer is we have, but that is because everything fell into place. The family called, the general practitioner called and we had a file on him. We can counteract it, but if you shorten the time and do not allow us to contact these other people, the evidence that brought the person to the hospital is there. The form 1 has already been completed. We are not talking about the grounds for the form 1; it is there. You need enough time to be able to build up the evidence to counteract it. That is another way of viewing this.

You can shorten it, but then you lose the validity of the decision. What I am saying is that to make a medical decision such as, "Is this person mentally ill? Is he or she dangerous to himself or herself?" and so on--and you are quite right, you are not getting into specific diagnoses--takes in some cases a few hours, but we are talking about the 50 per cent of cases that take more.

Ms. Gigantes: Fifty per cent take more than a few hours?

Dr. Hoffman: I cannot assess at least 50 per cent in my first interview. That is true. In one interview, the majority of my patients will either sit and glare at me or say, "Yes, I put my fist through the wall and my wife called the police." Then he will suddenly say, "Right?" I wonder why he said "Right?" so I call the wife to find out what happened. Meanwhile, she has gone to her mother's place.

I have 20 years' experience and I cannot assess at least 50 per cent of cases in the first interview. If you confine it to the first interview, then I am stuck with that. However, I will lose 50 per cent of the patients, or I will rubber-stamp and the validity of my decision will be in error because I

did not have enough information to counteract the general practitioner's opinion or the police officer's opinion.

Ms. Gigantes: There is another concern here. It relates to civil rights. During the time when you are going through this business of consultation and making sure your decision is the best you can make: professionally, the patient is in a situation where he or she is held. It is very much like detention without charge. There is no possibility of review during that period. If you make a decision earlier, at least there is the possibility of review opening up.

Dr. Hoffman: Bring in the review earlier in the Mental Health Act, as suggested to the Minister of Health (Mr. Elston). There are mechanisms. There is habeas corpus. You can sue the psychiatrist or anyone else who acted maliciously to maintain that. I am not aware of anyone having proven that someone did this maliciously, and yet the implication of continually shortening it is that someone is taking advantage and being malicious. There are other avenues, including review processes and other mechanisms of retribution on those who did this maliciously.

Ms. Gigantes: I do not think anybody is suggesting malicious intent at all. We are suggesting it is a grave thing to have people held pending a decision by professionals on whether they should be released. During that period, their recourse to their rights is absolutely denied. Five days seems an awfully long time. If it is operating adequately in Quebec, 48 hours seems more discussable.

Dr. Hoffman: I doubt that it is running smoothly. They would lose patients. The question is, do you want to lose the most gravely ill patients from the system.

Ms. Gigantes: One can debate this point for ever. I just wanted a better understanding of what we are talking about there.

I would like to talk about one more item you raised, and that is competency. You talk very passionately and concernedly about the intrusion of another person on the decision of competency. You relate it back to the doctor's right to make a decision about physical ailments.

This is quite different, is it not? If a doctor tells me I have a thyroid problem and it may kill me in two days, I still have the right to refuse treatment. However, if a doctor tells me I am incompetent, I have to go through a whole legal process. If I get through it, I may be able to show that I am competent.

While you suggested that all the problems you are noting in relationship to the amendments we have before us concern NDP amendments, earlier you said you were aware of the amendments in Bill 7 which were brought forward by the Ministry of the Attorney General. There is what you would call an intrusion on the treatment relationship in the amendments that are written in the bill, in the sense that we have a review process provided by those amendments.

5:40 p.m.

The only difference in the amendments I have put forward and which I hope to be able to convince other members of the committee to support is a different way of accomplishing a decision of competency and having a patient, when known to be competent, name somebody to act if he or she becomes

incompetent, through the rights process we have in our mental health legislation, and to set up a system for review boards to name such other person as they may consider to be an appropriate proxy in cases where the patient, while competent, has not named somebody to make a decision on treatment on his behalf.

Dr. Hoffman: There is a lot of difficulty with your rather strange variation for patients to assign another person. They are such substantive changes affecting all of medicine that they must be debated on a much broader forum than this committee. I see it as having major implications for all of medicine, for the geriatric patient who is ill and for the child. There are all kinds of questions. How do we then assess the competency of the person who has been assigned competency? What right does a physician have to get into that arena?

Ms. Gigantes: The physician would not be involved in the proposal I am making. It would be the review board.

Dr. Hoffman: That is why it is so strange. Right now, competency has initially always been the responsibility of the physician in all disciplines, including psychiatry. To break away from that--

Ms. Gigantes: Competency is a legal matter. We have heard long lectures in this committee from the Attorney General (Mr. Scott) on what competency is in legal terms and he assures us there is no such thing as medically approved competency. It is a question that is decided legally and by the courts in our system of law. I do not wish to be argumentative.

Were either of you gentlemen on the ECT committee? Did you have input to that committee?

Dr. Hoffman: Do you mean the Clark committee?

Ms. Gigantes: It was the Electro-convulsive Therapy Review Committee.

Dr. Hoffman: I do not know which committee you mean. Do you mean the government-appointed committee?

Ms. Gigantes: That is correct. Did you have input to that? Neither of you?

Dr. Saunders: We had input as an association but neither of us sat on the committee.

Ms. Gigantes: Have you reviewed the recommendations of the committee?

Dr. Saunders: Yes, we have. We are in the process of doing that now.

Ms. Gigantes: Are you satisfied with what you have looked at?

Dr. Saunders: Not completely. We have some comments that we will be submitting.

Ms. Gigantes: That was a committee basically made up of medical practitioners.

Dr. Hoffman: No, it was not. There were two medical practitioners.

Ms. Gigantes: It was certainly people in the medical professions.

Dr. Hoffman: No. I am sorry. There were eight or 10 members and two were physicians.

Ms. Gigantes: Yes, but there were other health care professionals.

Dr. Hoffman: Now you are using different words. You started off by saying "medical" and now you are saying "health care." There were many other groups involved, including patient advocates and lawyers, who are neither medical nor health care providers.

Ms. Gigantes: There were two of those.

Dr. Hoffman: All right. Out of a membership of 10, they were hardly all medical practitioners.

Ms. Gigantes: If I recollect, I said there were a good number.

Mr. Chairman: Mr. Ward, the parliamentary assistant to the Minister of Health, may have a couple of comments to make, and then I will go back to the speakers' list.

Mr. Ward: I wanted to make a couple of points because I was a little concerned when Dr. Hoffman indicated in his preamble that the proposals before this committee had not been made available for discussion. The Minister of Health forwarded to the Ontario Medical Association the amendments that were proposed by the NDP very early in this month. Again, from your comments, they are not government amendments. They were amendments that were submitted to this committee.

The other thing I would like to clarify is that for some time now the ministry has met with the executive of the Ontario Psychiatric Association and with the psychiatry group of the OMA, there have been meetings at public hospitals throughout the province and we have met on numerous occasions with patient advocacy groups. I suppose we will hear those groups the next time this committee meets, if we do not have time today.

You conceded, Dr. Hoffman, that the amendments in the Attorney General's bill to bring certain statutes into conformity with the Charter of Rights may not have met with overwhelming joy and support on the part of the profession, but there has been some recognition that they represent a movement towards conformity with the charter and I am sure we will hear the same thing from the advocacy groups. Perhaps neither side is totally enamoured with all of the proposals, but it is a best attempt at compromise.

Another point I want to make--Ms. Gigantes raised it briefly--is that the issues surrounding legal matters pertaining to psychiatry do not begin, nor will they end, with this committee's consideration of this legislation. Back in 1978, when the current legislation was introduced, I believe there were public hearings for three weeks. Since that time consultation has gone on at many opportunities and at many levels.

It is interesting to note that when the legislation was introduced in 1978 the recommendation with regard to committal was for 72 hours, which was a movement from the 30 days that then existed. At that time, because of the points Dr. Hoffman mentions with regard to long weekends and the problems in smaller, remote communities in getting a second opinion, a compromise was

brought in for five days. I want to reiterate that this is not the first time these issues have been considered.

Another point I want to make is that there are a couple of issues currently being considered by different groups. The Electro-convulsive Therapy Review Committee was mentioned as one. As soon as their deliberations are complete, they will be making recommendations that may result in further amendments. Another group regarding competency, the advisory committee on substitute decision-making, which again involves not only the profession but also patient advocacy groups, will also make recommendations that could result in further amendments down the road.

I make all these points with regard to a concern that the committee may want to invite further delegations and keep on going with this process or recognize that there has been ongoing consultation. The next group scheduled to appear probably provides some balance to the presentation that has been made on behalf of the physicians and the psychiatrists. The committee may just want to hear that other group and then move into clause-by-clause on the basis of having balanced input on either side of the argument rather than get into a protracted round of more public hearings.

Mr. Chairman: Thank you, Mr. Ward. I have a couple of comments, if I might, from the chair before I turn to Mr. O'Connor.

First, I had given Mr. Callahan an undertaking that we will not vote on any amendments today and I did so in recognition of the hour. We have a little over a half hour left in our deliberations.

Second, we have the advocacy groups to hear from and we are scheduling times with them now. I presumed it would be the committee's position that you would not want to vote until you had completed the input from the groups we have agreed to hear from up until this point. I made that decision without consulting with the committee, but I presume you will co-operate with the chair in that undertaking.

Third, I would like to extend an extremely warm welcome to visitors we have who were introduced in the House, but I would like to welcome them to our committee deliberations. We have members from the Northwest Territories. Gentlemen, if you will just wave your hands, we will say hello. We are delighted to have you here and we trust that you will enjoy not only the proceedings in the House but also the proceedings in the committee.

5:50 p.m.

We like to believe, on occasion at least, that a lot of the hard work is done in committee and a lot of the easy work is done in the House. I do not know whether that is true, but the dialogue is a little more informal and free-flowing in committee than it is in the rather structured proceedings we have in the House.

We welcome all of you and we are delighted to have you here. We hope you enjoy your stay in Ontario and will take back some information that will be useful to you, as well as some fond memories of a sister territory that became a province. Perhaps some day that will be something the Northwest Territories will be looking at. I know that is a point of discussion, and I do not want to get into that. I wish you well in whatever happens. Ontario will attempt to support whatever your local deliberations are in the territories.

After those few short remarks, I will turn to Mr. O'Connor to raise his questions.

Mr. O'Connor: In view of the time and the very decisive questions that have already been asked, I will forgo my formal questioning. However, I wanted to raise another matter to which you alluded. Is it my understanding we will not have time today to hear from the advocacy groups, followed by questions?

Mr. Chairman: It is fair to say that. I am looking at the list. After you, Mr. O'Connor, I have Mr. Partington, Mr. Villeneuve and Mr. Cooke who have asked for an opportunity to raise questions. It is getting on towards six o'clock, and I doubt that the advocacy groups will have an opportunity to make their presentation today. I have also indicated to them that we would hear from them in the early part of the week, starting on Monday, in the light of the way the scheduling is going today.

Mr. O'Connor: For the record I understand we will be receiving a similar request from the Ontario Hospital Association to be heard on these issues. There is a representative here today, and she has indicated that the association will be forwarding us a formal letter making that request. It is a follow-up to the letter you have already read, and committee members perhaps should consider it at our next meeting.

Unfortunately, I have to leave at six o'clock. I do not want that interpreted by the people here as a lack of interest in their presentation, particularly if the advocacy groups make it then and I leave. I understand Mr. Partington also has to leave at that time. That will deplete our ranks quite severely. However, as you have indicated, there will be no votes. Is that correct?

Mr. Warner: We are not voting until you leave the room.

Ms. Gigantes: I move that the members be involuntarily committed to listening to the opposite side of this discussion.

Mr. Chairman: Ms. Gigantes, they will be, I assure you.

Ms. Gigantes: We should not hear the advocacy groups unless they are all here.

Mr. Chairman: They will have 120 hours of assessment, following which they will be given whatever treatment is in order.

Ms. Gigantes: I am willing to do it in much less time than that.

Mr. Partington: Following on what Mr. O'Connor said, we would very much like to hear from the advocacy groups. That is one of the reasons Mr. O'Connor made that statement. We would like them rescheduled so they could start at the beginning of the next meeting.

Mr. Chairman: That is what we have done. As usual, the chair is anticipating the thoughts and inner concerns of this committee. We have moved in that direction. I will now move back to questions.

Mr. Partington: I have one brief question with respect to the access to patients' records. We discussed that briefly. Perhaps you could make a general statement. If there was completely open access, what effect might that

have on families providing you with information? What effect would it have on you in reporting your own observations and considerations?

Dr. Hoffman: First, I recognize the openness of books as the direction in which civil rights is going and medicine will have to go. Nevertheless, it is certainly changing the practice of medicine and psychiatry, in that we are being careful what we are recording, even if it is for our colleagues who work in the middle of the night, evenings or weekends. Some vital information is being lost to the record, but we are relying more on verbal means. That is a fact of human nature when you open the records.

I want to address the issue of when to stop it if you are going to allow patients access to records. Everyone seems to agree you would stop it if the patient might kill himself or someone else; if he might inflict physical bodily harm. You can picture mentally ill people in the Clarke Institute or at Penetang who, when they find out who said what, will get even years later. I presume that is not debated any longer; how you prove it I do not know.

The question is what the NDP amendment misses and what other amendments recommend, whether it is going to create emotional harm to the person or to someone else. Destroying family ties is what I worry about. I treat a large number of pretty psychotic kids. My general attitude is that they can have access to the record.

However, I worry about the imaginary case I am going to have some day when a mother or a father has told me something of his or her personal life and views of the child and some of his or her fantasies and dreams. That can come up. We may have a mother who is being seen by me when her kid is being seen by my resident, and it is in the record. What could happen if a patient had access to that and I could not withhold it?

Somehow the law always ignores emotional harm. You are doing that with the certification process. You can do it with access to records. Our society is not very good at recognizing that people can be emotionally harmed and that family ties are important. Ideally, from a medical point of view, I want some recognition that some patients and families will be harmed emotionally if they have access to their records. I would like to be able to withhold them. From a civil rights point of view, they must have the right to appeal that and to have a review board decide. That is where I would come down on it all.

Mr. D. R. Cooke: I have a great deal of empathy for what you are saying. The real problem is trying to make certain that records are accurate. There have been a number of instances where the patient alleges inaccuracies in reports that can be traced to records.

Perhaps the most damning one I can recall was about 10 years ago. It concerned the Clarke Institute. A very lengthy report damning the character of a patient or an alleged patient, based on all kinds of tests that were alleged to have been taken, was given to the court. We were able to show that the patient had not even been in the Clarke at that time. That was eventually admitted.

I take it that you accept the recommendations of the Attorney General (Mr. Scott). Is there anything else we can do to try to ensure that there is accuracy in the records as they are being prepared, without having the patient doublecheck them which, as I can understand, you do not want to do?

Dr. Hoffman: I do not see any alternative to a patient's

doublechecking. In the vast majority of cases, and this is a personal point of view, the profession would drive them crazy because many psychiatrists write down fantasies, dreams and psychotic material of which the patient will have no memory later.

Nevertheless, with my own balance of civil rights, in the vast majority of cases, I think the patient has to have the right to review, correct or dissent. I do not know what more can be done.

6 p.m.

Dr. Saunders: I have a quick addition to that. Psychiatric records are quite different from other medical records, which are generally factual. You are putting impressions and all kinds of information in psychiatric records that you will not find in regular medical records. That produces some problems for psychiatrists or for anybody who is putting a psychiatric history on a medical record.

We recognize that availability is going to be there, but how do you get a patient who looks at a record and says, "But the fantasies that are recorded here are not true"? That patient at that point may not recall those things, and yet that is what was recorded by the psychiatrist. That is where you get into the problem of who is going to argue this is what the patient really said, or what he believed he said. I am not sure we will get around it.

What is happening now and what is going to continue to happen is that the medical records are not as useful as they used to be. We have to live with that, which is very difficult. I review a lot of coroners' inquests, and one of the greatest problems is communication between physicians and other health care workers. They are saying, "We have to improve our communications," and yet if you look on the other side of it, the law is making it more difficult to communicate through the medical record just because of the openness of the record. It is something we have to live with, but it is a problem.

Mr. Villeneuve: To Dr. Saunders and Dr. Hoffman, thank you very much for bringing the day-to-day, actual, real-life situations. The NDP is bringing in these amendments which, with all due respect, are well meaning but they sometimes overlook the forest for the trees.

Detention time is something I recall becoming involved with, particularly with regard to someone going to a psychiatric hospital for analysis. I get neighbours, families and communities saying: "Please try to ensure that this person does not return until such time as some corrective measures have been taken. He is terrorizing the family, the neighbours and the entire community." How much does the legal process or politics interfere with your medical practice right now, detention time and otherwise?

Dr. Hoffman: By detention time, you mean the time a person is held in a hospital involuntarily?

Mr. Villeneuve: Yes.

Dr. Hoffman: I am afraid psychiatrists are not much interested in detention time; we are more interested in treatment time and discharge. The truth of the matter is that we have limited curative abilities. To hold a person simply because he is a terror is not reason enough. What a psychiatrist wants is a treatable psychiatric condition. If the patient is also a terror, that is fine, but we are looking for treatable conditions. If you are a terror, go through the legal process and be charged.

Unfortunately, in the current system, I think it was someone from the Attorney General's office or in the penal system who said, "We are getting more and more mentally ill people." That is partly because of the restrictions we have, this business of bodily harm. You can terrorize a neighbourhood, but if you are not threatening someone or you are not causing bodily harm--it is not enough to play loud music all night long every night and disturb everyone. Even if you are as crazy as a hoot owl that is not enough.

To come back, psychiatrists can hold a mentally ill person as long as we need to until we find a treatment. When we have run out of treatments, even if he is a terror, we are likely to send him back to the community. If he is not dangerous at all, we cannot hold him. The tenure time is not an issue.

Mr. Villeneuve: I can appreciate that. I speak of terrorizing such as a mother phoning me in a case where her 42-year-old son has literally physically attacked her on a number of occasions. He has been brought to the Brockville Psychiatric Hospital, and the doctor has said: "We know there is a problem, but we are short on space. We have that problem and we will have to release him."

I get a plea from not only the mother but also a number of people, saying: "Please do something to have him treated, to have him looked after. . . Please do not send him back because he will do something very desperate, either kill someone or do some physical harm to someone." I have a real problem with that. I have never had the other situation where someone has said, "They are holding someone here against his will."

Dr. Saunders: I might enlarge on that. The act states that if there is a threat of serious bodily harm, you can then involuntarily commit someone. The real problem arises with those who are not threatening severe, serious bodily harm to others but who are very disruptive. I too get those calls where families say, "Somebody has kept us up," and as Dr. Hoffman has said earlier, these people can go on for 48 hours or 72 hours. The kids are losing sleep, they are not doing well in school and they may even have to drop out. The whole household is in turmoil. Often the neighbourhood is in turmoil, not because somebody is threatening to kill somebody or even hurt somebody, but because somebody has been very disruptive.

You cannot put these people in hospital because the act will not allow you to put them in. They are the people who are creating a lot of problems. There are a lot of them out there who in years gone by were in hospital and being treated. Now, when we get the desperate calls, we say, "Sorry, the Mental Health Act will not allow that." These people have to struggle on in whatever way they can.

We are interested in the rights of individuals who are mentally ill. There is no question that we are interested in their rights, but sometimes we forget about the rights of all the other people who are involved. Being normal sometimes means you do not have as many rights as being abnormal.

Mr. Villeneuve: From sitting on this committee, sir, I have to agree with you wholeheartedly. Just one more comment. Have I heard you say that the legal process is actually interfering with your practice as a professional medical practitioner?

Dr. Saunders: Yes, it is.

Mr. Villeneuve: Are you also saying that going further would further disrupt you as a professional?

Dr. Saunders: There is no question in my mind at all.

Mr. Villeneuve: In summing up after having heard from Dr. Saunders and Dr. Hoffman--I do look forward with anticipation to the advocacy groups' presentation, but we have four very learned people here, legal people, Dr. Henderson and the parliamentary assistant--I see this as the same type of deal as we have with Bill 94, ladies and gentlemen. Leave politics to politicians and leave medical business to doctors.

Dr. Hoffman: If I can make a quick comment, it is not so much that it disrupts the profession, because the vast majority of psychiatrists would much prefer doing analysis up on St. Clair and seeing nonpsychotic patients. Medical doctors will always treat other things. The vast majority of psychiatrists find it so difficult to treat psychotic patients in this legal arena that they have withdrawn from the issue.

Hospitals will not admit them and psychiatrists will not work where there is the possibility of treating these people. When it becomes a close call, forget it. "The grounds are not there, Mrs. Jones; go somewhere else." So Mrs. Jones calls the local MPP. The truth of the matter is, psychiatrists do not want this. They are starting to shy away from it and they will go elsewhere. There is a lot of nonpsychotic work where you do not go through any of this. The Clarke feels it, and you see it in the profession. It is a problem with the profession.

In a way it is a problem with society, because it is making it unpleasant now to go through. Who wants to be attacked in court? Who wants to go to a review board twice a week? That is not why we are in it. It will not affect the profession as much as the mentally ill person, the seriously ill person; that is who is going to be cut out. The psychiatrist will earn his living doing something else.

Mr. Villeneuve: That is precisely my concern.

6:10 p.m.

Mr. Chairman: I have a couple of matters to bring before the committee with respect to the Ontario Hospital Association. As I indicated, there will be no votes taken today because of the agreement that I gave to the members and brought before the committee members who had to leave early. However, there will be a motion brought before the committee on Monday requesting the same consideration for the OHA as we have granted to the Ontario Medical Association today. I just wanted to advise you of that.

I have scheduled, through the clerk, time for the OHA to make a presentation with the proviso that it is agreed to by the committee on Monday. If it is not, the OHA recognizes and has been advised that it may be in a position where it can only circulate a brief with respect to its position on this issue.

I have not pre-empted the committee's decision, but I have had to leave it flexible. My intent is to get the submissions over with on Monday. This is in keeping with the request of the parliamentary assistant as well, who I believe would like to get into clause-by-clause on Tuesday, if at all possible.

The advocacy groups have agreed to be here on Monday as well. If any of the representatives who are here today cannot make it, they will have substitutions in their place who will be here to carry their concerns forward.

We have scheduled those two matters for Monday with the intent of the chair being that we will proceed then to clause-by-clause on Tuesday next. If you take issue with anything I have said, speak now or forever hold your peace.

Mr. D. R. Cooke: I have been lobbied by Justice for Children, and some other members of the committee may have been as well, because in its submission it failed to look at the issues under the Mental Health Act and now is looking at them for the first time. It is concerned about the right of appeal to a child under the age of 18, etc. Now that this has been opened up to hearing submissions again, it too might want to have a submission.

Mr. Chairman: That is of concern to the chair. I have not been lobbied by the group yet, but I probably will be. The only thing I can say is that this is an endless process if you want to keep opening it up. That is a determination that will have to be made by the committee. I could perhaps ask Mr. Cooke to bring the request forward on Monday, if he intends to pursue their interests, and have the committee make the decision. The chair will not make that decision. Mr. Ward, you wanted to make a comment?

Mr. Ward: I wonder whether it would not be appropriate for any groups which come forward and make suggestions such as that, that they be directed to provide a written submission so we can have additional input available to us on Monday. If we do not have time to hear them all, then at least we will have the opportunity to peruse their points of view. I really am concerned that we will get into a three- or four-week hearing process. It is up to the committee how it orders its business, but I am not sure the committee wants that.

Mr. D. R. Cooke: We do not want to be like the standing committee on social development.

Ms. Gigantes: We have had a chance to take a look at the written comments from the OHA. Is there anyone on the committee now present--our numbers are dwindling--who feels it will be necessary to hear the hospital association on the points 1 to 8, which it has enumerated for us in written form, or do we feel we have heard a substantial submission on many of the points which the OHA is raising concerning the amendments?

Mr. Chairman: No one here present has indicated that he or she feels contrary to the comments you have made. However, it would be appropriate if the chair indicated to you that I have been advised by Mr. O'Connor that he is going to bring forward on Monday a similar motion to the one he brought forward with respect to the OMA.

Ms. Gigantes: I prefer to deal with it now rather than on Monday. I will tell you why. If we are going to hear argument against amendments, as the mover of many of the amendments under attack, I would appreciate very much if those people I have consulted in the advocacy groups in the writing of these amendments would be the last to speak.

I did not go into an all-out battle about opening up these hearings again. I ask the committee's co-operation in ensuring, if we are dealing with comments, that we deal with them on Monday, finish them and then be ready to proceed with clause-by-clause, not because I want to cut off discussion on

these matters, but because I do not know how much more we are going to learn. We are going to hear a fair amount of repetition on Monday from the OHA.

Mr. Chairman: What you are proposing is not out of order. It may be inappropriate because of the remarks I made earlier. In the first instance, I gave an undertaking to Mr. Callahan that there would be no votes in his absence because he was called away. The other gentlemen who have left are under the same impression because I gave that initial undertaking. If you bring forward a motion now, you are putting the chair in an awkward position. I cannot call it out of order because it is not.

Ms. Gigantes: I do not know what you are discussing as a potential motion.

Mr. Chairman: What you are discussing is that the OHA not be heard on Monday. I am telling you that Mr. O'Connor has already indicated he wants to bring that matter before us and he is not here to defend his position now.

Ms. Gigantes: I did not suggest they should not be heard. I am just asking whether anybody feels they must be heard. If they are to be heard, can we arrange matters in what I would consider to be at least a co-operative venture and hear the OHA first--I am quite willing to hear it--and the advocacy groups after that?

Mr. Chairman: I have no strong feelings with respect to the order. I have not even thought about that. You have made your position clear.

Ms. Gigantes: The other matter in terms of process is that this committee sits until 6:30 p.m. At some point, we have to say that if people cannot stay until 6:30 p.m., they should arrange substitutes. As chairman, you cannot give undertakings that we will not do this but we will do that and so on for people who are not here and who have not provided a substitute while they are away.

Mr. Chairman: Ms. Gigantes, with respect, after I did that, I made it very clear to the committee that I did it. At that time, I said that if you had a problem with the way I was going to conduct the order of the business, to please tell me then.

Ms. Gigantes: My only problem is the new disclosure we have from you now. You made a commitment, or there was some understanding--perhaps you can clarify this--between you and Mr. O'Connor about your receipt of his motion on Monday about how we deal with the OHA. That is the little problem I have.

Mr. D. R. Cooke: Is that a commitment?

Mr. Chairman: I have not committed the committee to anything. As a matter of fact, with the representative of the OHA here, I can tell you that the clerk has been directed to leave the OHA with this direction. First, if the committee votes on Monday to allow it to speak, it shall be heard. If the committee does not, we will circulate its brief. That is the undertaking that I have given.

Ms. Gigantes: Why am I being denied an opportunity to vote on that matter now? Can you answer that?

Mr. Chairman: Yes; because I gave an undertaking to the members who had to leave.

Mr. Polsinelli: I would like to speak--

Mr. Chairman: I will give Mr. Polsinelli, who has been noticeably quiet today, an opportunity to speak; maybe he can clarify it.

Ms. Gigantes: If I can just wrap up my point where I have my problem--

Mr. Chairman: I think you are splitting hairs.

Ms. Gigantes: If I understand you correctly, you gave an undertaking to one member of this committee who could not stay and had not arranged a substitute.

Mr. Chairman: Three.

Ms. Gigantes: You gave a commitment to three that there would be no vote?

Mr. Chairman: Yes, on anything, because they had to leave.

Ms. Gigantes: You gave a commitment on anything. I understood when you first raised this matter, and you said I did not object, that you had given a commitment that we would not vote on clause-by-clause while they were away. I believe the record, when we get it a month from now, will indicate that is what you told us.

Mr. Warner: That is precisely what you said.

Mr. Chairman: Technically, you are correct. I think that in the spirit--

Ms. Gigantes: I would prefer us to make a decision on this matter. I will put forward a procedural motion that we make a decision on the matter of process. I am not suggesting that you go back on a clause-by-clause nonvoting agreement.

Mr. Chairman: Ms. Gigantes, at the outset of my remarks, I made it clear that you were not out of order. However, I said I had some difficulty with the intent of what I had said to the committee and to the members who left. I did not check with them. They did not leave me a note on what their responsibilities are. But I know Mr. Callahan and the other members have stayed until the last minute on many occasions. They could not do so today, and I believe they were left with the impression by me that we would not be voting on anything.

At that time, I was not aware that a vote would be coming forward on the OHA. I was speaking--you are correct, as usual--with respect to the technicalities of the intent of what the chairman said.

If you wish to force a vote now, you are quite in order to do so, and I will accept your motion.

Ms. Gigantes: I move that this committee make a decision on process for Monday; further, if this committee decides it will hear the OHA, that it

schedule the hearing of submissions by the advocacy groups after the OHA, which I hope will be completed, all-inclusive, on Monday.

Mr. Ward: It is fair to say that the government members are of the opinion that, given the presentation by the OMA followed by the advocacy groups, we will have had pretty comprehensive input both for and against the New Democratic Party amendments.

Ms. Gigantes: And some of yours.

Mr. Ward: And some of ours; that is true. Unless the committee is prepared to start a whole new round of public hearings, which might take some days if not weeks, we should leave it at that. Given the chairman's undertaking to those three members, it would be appropriate to uphold the chairman in his dilemma at this time and to suggest that the vote be taken quickly at the beginning of the next hearing, with the OHA well aware of the opinions of all parties in this matter.

Mr. Chairman: Many of the members of this committee have served in the capacity of chairman and know the dilemma the chairman has with matters that come before him. I try to use a reasonable degree of fluidity in the chair's approach to the business at hand. I thought I was being fair with the members who had other problems to attend to.

We have a motion. Do you wish to have the motion called? We have only a few minutes left.

Mr. Polsinelli: I would also like to uphold your integrity and ask that this vote be deferred until Monday. I am in total agreement with the parliamentary assistant's words that we should try to respect the undertaking you gave to the four members, even though it may have been an inappropriate undertaking. I realize that you did canvass the opinion of the committee at the time. I would also like to echo Ms. Gigantes's position that if Mr. O'Connor was prepared to move this motion on Monday and he informed you today, he could have let the committee know so that we could have made that decision today.

Mr. Chairman: That is fair. The intent of your motion is to--

Mr. Polsinelli: Defer this vote until Monday.

Mr. Chairman: And therefore to adjourn now?

Mr. Polsinelli: Exactly.

Ms. Gigantes: Mr. Chairman, there is a motion on the floor. I have no objection to adjourning, but we should deal with them in order.

Mr. Chairman: A motion to adjourn precludes all other motions.

Mr. Polsinelli: I move to adjourn.

Mr. Chairman: The motion to adjourn has been moved. All in favour? Opposed? Carried.

The committee adjourned at 6:24 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
MONDAY, MAY 26, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polisinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Mellor, L.

Witnesses:

From the Ministry of Health:

Ward, C. C., Parliamentary Assistant to the Minister of Health (Wentworth North L)

Sharpe, G., Counsel, Legal Services Branch

From the Psychiatric Patient Advocate Office:

Giuffrida, D., Legal Counsel

From the Advocacy Resource Centre for the Handicapped:

McKague, C., Head, Litigation Department

From the Canadian Foundation for Children and the Law:

Weagant, B.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, May 26, 1986

The committee met at 3:58 p.m. in room 228.

EQUAL RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

The Vice-Chairman: Thank you, colleagues. Perhaps we could call ourselves to order. I am advised by the staff that Mr. Ward has been a bit delayed in joining us. We will be dealing with a couple of procedural matters just off the top and therefore we will proceed as he makes his way to the committee.

The first procedural matter deals with the amendments. You should have in front of your places now a brand new package of amendments which looks like this, with your name in red up in the corner.

Interjection.

The Vice-Chairman: I am told it might even be in blue or it might be a date. The clerk stresses that you should please throw out all other stray amendments to section 31 you may have collected so that as we move through it, we can deal with the updated package. You might wish to date the package if it is not already dated, so if there are changes to it, you will find the reference easily.

We will resume the adjourned debate on a motion by Ms. Gigantes that the committee not hear representations from the Ontario Hospital Association on Monday, May 26, and that the last presenters on section 31 of Bill 7 be the Advocacy Resource Centre for the Handicapped and the Psychiatric Patient Advocate Office.

Ms. Gigantes, did you adjourn that debate?

Ms. Gigantes: No.

The Vice-Chairman: Who was speaking at the time?

Ms. Gigantes: You should have a speakers' list.

The Vice-Chairman: I will take the speakers' list. Does anyone wish to speak on the resumed debate?

Mr. Partington: With respect to the Ontario Hospital Association submissions, I believe we should hear from the Ontario Hospital Association. They, like the psychiatrists before, have direct experience in this field. We cannot decide these amendments properly without hearing from the people who will carry out the legislation and will be affected by it. I believe they have the interests of their patients most sincerely at heart. Therefore, as we have reopened these proceedings for the psychiatrists and for the advocates of

patients' rights, we should also open these hearings to the Ontario Hospital Association.

Mr. D. R. Cooke: Mr. Partington, is there anything they wish to say to your knowledge that is either in rebuttal to submissions we heard last week or new?

Mr. Partington: I have no idea. I have not met with them.

The Vice-Chairman: Are there any other speakers on the matter?

Ms. Gigantes: I have just one final note. I have no objection to listening to the Ontario Hospital Association. However, we have gone through some precedent-breaking manoeuvres here where we have opened up presentations again. The Ontario Hospital Association did provide us with an outline of its concerns. I asked the question last week, once we had that list of concerns in hand, whether any member of the committee felt there were issues raised which had not been addressed by the psychiatrists during their presentation last week. I did not hear any member of the committee say, "Yes." I do not hear any member of the committee say that today. I expect we will have very much the same ground covered that we did when the psychiatrists were before us.

My concern is for time. We are running into a crazy schedule with this bill. I would prefer, as one member of the committee, to hear what the patient advocates have to say and then get on with our own discussions, which are also going to take some time.

A further concern I might present to you is that at least one of the members of the advocacy group will not be able to return to this committee tomorrow if we are to proceed and have their presentation carry over into tomorrow. That presents us with another problem.

Mr. O'Connor: The comment Ms. Gigantes just made is the best argument for hearing from the Ontario Hospital Association. She said she does not know what they are going to tell us. Is that not the reason we want to hear from them? The association is one of the primary health care givers in the province. It is fundamentally involved in the whole system and therefore has something relevant to say with regard to this issue.

We have agreed to hear other groups because amendments were tabled by both the government and Ms. Gigantes on this subject after or very shortly prior to the closing of hearings, which did not give groups such as the OHA and others an opportunity to make known their views. We felt they were important to the system and therefore we should relax our rules slightly in order to hear them.

If we did allow the psychiatrists to speak and if we do allow the advocate groups who have spoken once before, surely in extending the generosity of a second shot to them, we can at least allow the OHA a first opportunity to provide us with their views. I cannot see the great difficulty in allowing them to come before us. It seems to make sense that as we have heard the others a second time, we should now be prepared to hear them.

The Vice-Chairman: Thank you, Mr. O'Connor. Ms. Gigantes, did you indicate you wanted to speak further?

Ms. Gigantes: Yes. I would first like to ask Mr. O'Connor whether he has the outline that we received from the Ontario Hospital Association last

week. I do not know whether you had the benefit of the presentation from the psychiatrists and the discussion that followed, or whether you were forced to leave early.

Mr. O'Connor: Today at 3:50 p.m., I received the outline of the OHA submission for the first time.

Ms. Gigantes: Last week, the OHA wrote a letter raising its areas of concern. I am not arguing that we should not hear its representatives because I do not know what they are going to say; quite the contrary. I suggest that the areas they wish to speak to are areas they flagged for us last week. Further, those are areas that were addressed in both the presentation and in the discussion that followed. The psychiatrists were with us last week.

Mr. O'Connor: The letter was very general in discussing areas the OHA wants to deal with. We have a brief that is much more specific. As we all recognize from talking so much both here and in the House, the oral brief is much stronger and more persuasive than anything that can be reduced to either a short letter or a written brief. For that reason, we should hear the OHA representatives.

The Vice-Chairman: Is there any further discussion on this matter? Are we ready for the question? I have a request that the motion be read again.

Ms. Gigantes moved that the committee not hear representation from the Ontario Hospital Association on Monday, May 26, and that the last presenters on section 31 of Bill 7 be the Advocacy Resource Centre for the Handicapped and the Psychiatric Patient Advocate Office.

Is it simpler to understand by virtue of the schedule, colleagues, the proposed schedule lists all three. The proposed motion deletes the Ontario Hospital Association and retains the other two. Are we clear on the motion?

All those in favour of the motion by Ms. Gigantes? All those opposed?

Motion negatived.

Mr. D. R. Cooke: I have a procedural motion, Madam Chairman.

The Vice-Chairman: Mr. Cooke moves that the committee consider representations this afternoon from the group called Justice for Children.

Mr. D. R. Cooke: This is an organization that made representations to us in early February. While at that time its speakers touched briefly on the Mental Health Act, they did not become aware, and I do not think any of us became aware, of some of the ramifications of the changes we are considering, particularly the issue of consent being given by a parent to an adolescent's treatment. We have not looked at closely at that. It is an issue that would be relevant to almost any adolescent problem of a psychiatric nature in which parents would be intertwined in one way or another.

In particular, Justice for Children is concerned about the mounting problem of the decertification of adolescent units at general hospitals. As I understand it, this will result in their being governed by the Child and Family Services Act, while the psychiatric hospitals will continue to be governed by the Mental Health Act.

Mr. Brian Weagant is present this afternoon. He has prepared a written

submission, which is to be distributed to members shortly. He would like to supplement that with a brief submission, which presumably could be put at the end of this afternoon's agenda. I am asking to have that added to the agenda.

4:10 p.m.

The Vice-Chairman: Is there any discussion on the motion?

All those in favour of Mr. Cooke's motion? Opposed?

Motion agreed to.

The Vice-Chairman: I will turn now to the question of the agenda.

Mr. O'Connor moves that the committee adopt the agenda as printed, as amended by the addition of the group, Justice for Children.

Motion agreed to.

The Vice-Chairman: We will move in the following order. First, the Psychiatric Patient Advocate Office; second, the Advocacy Resource Centre for the Handicapped. I am told there might be a joint presentation but if not, that is the order. Third, the Ontario Hospital Association; and fourth, Justice for Children.

It is a joint presentation, fine. Would you be good enough to give your names to Hansard.

PSYCHIATRIC PATIENT ADVOCATE OFFICE AND
ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

Mr. Giuffrida: I am David Giuffrida. I am legal counsel to the Psychiatric Patient Advocate Office of Ontario.

Ms. McKague: I am Carla McKague. I am head of litigation at the Advocacy Resource Centre for the Handicapped.

The Vice-Chairman: Thank you. Please proceed.

Mr. Giuffrida: Members of the committee, thank you for giving us an opportunity to address you. When this meeting was held last week, Mr. Peter Bartlett of the committee on legal issues and psychiatry was here as well. He is unable to be with us today.

Carla McKague, as well as being a lawyer with ARCH, is a member of the committee on legal issues and psychiatry, as I am. The presentation we are going to make today reflects the views of that committee as well.

Ms. McKague: At this point I will add that there are several other organizations that have also endorsed this presentation. A number of them are members of the Coalition on Psychiatric Services. That includes the Canadian Mental Health Association, both the Ontario division and Metro Toronto branch, the Ontario Association for the Mentally Retarded, On Our Own, which is a self-help organization of present and former psychiatric patients, and several community organizations including Margaret Frazer House, Houselink Community Homes, Parkdale Activity and Recreation Centre and two branches of an organization called Friends and Advocates.

I am informed you will also be receiving, if you have not already received, a letter from the Ontario Association of Professional Social workers. This addresses some of the proposed amendments--those to do with competency and consent to treatment--and endorses its support for the recommendations of the Electro-Convulsive Therapy Review Committee which are reflected very closely in those amendments.

Mr. Giuffrida: This committee is faced with the difficult task of sorting through the Mental Health Act, the initial amendments proposed in Bill 7, the amendments proposed by the Attorney General and those by the New Democratic Party. I see the goal of the committee as striking a balance between the rights and interests of the individual, the cherished autonomy of the individual, which is so highly valued in democratic societies, and the interests of the state. These are to protect other people from those who may be so mentally disordered that they become a danger to others and the perceived interest of the state is to protect other people from their own actions when they become so seriously disordered that they may pose a harm to themselves.

The Charter of Rights places certain rights of the individual above law but even that document does not relieve legislators of the difficult task of striking that balance because the rights set out in the charter are not absolute. All are subject to section 1, which says that the rights and freedoms are subject to only such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Having established an obligation to bring Ontario legislation in compliance with the charter, there is more than one way to do that. Even now you have before you more than one approach as to how the Mental Health Act may be brought into compliance with the charter. The courts have said the standard is not one of perfection. The way in which one province statutorily deals with an issue shall not be the paradigm that every other province has to fall into line with. There is a lot of room for creativity and imagination in deciding how to address some of the thorny problems described by Dr. J. A. Saunders and Dr. B. Hoffman when they were before you last week. These are issues that will concern anyone looking at this legislation in a conscientious way. They provided some useful insights into the matters before you. I was struck by the sensitivity of their presentation and the affirmative things both speakers said about patients' rights, though we disagree on the extent to which they should be adopted in this legislation.

Any proposed amendment that totally sacrifices legitimate goals of the mental health system to preserve an individual right should be rejected, just as anyone who totally sacrifices the right of an individual that should be preserved by the Charter of Rights and Freedoms should be rejected as well.

It was suggested at the last meeting that mental health legislation interferes with the practice of psychiatry. At the risk of sounding cute, I have to say that the legislation does interfere with the practice of psychiatry in the same way that the presumption of innocence interferes with law enforcement. Trials interfere with law enforcement and elections interfere with the process of legislation. They are necessary forms of interference. They moderate a process.

The proposed legislation interferes only with the nonconsensual practice of psychiatry. There is nothing in Bill 7 or any of the amendments before you that would make it more difficult for a person who wants to be in hospital to be in hospital. There is nothing in any of these amendments that would make it

more difficult for a competent patient who wants psychiatric treatment to get psychiatric treatment. We are discussing the coercive side of psychiatry. I do not mean to use that in a pejorative sense because the way the legislation is framed, and will continue to be framed if any of these amendments are adopted, psychiatrists are given a joint jailer-healer role.

It must be an uncomfortable role, one I do not envy them having to carry out. On the one hand they are meant to establish a therapeutic alliance with their patients. In my experience as an advocate at Queen Street Mental Health Centre for three years, there are many sensitive and conscientious psychiatrists who work very hard to do that. On the other hand, by their signature, they can take away the individual liberty of a person. By their signature, they can say, "You are not competent to make treatment decisions and I am going to look for a nearest relative for substitute consent," or "I am going to impose restraints," or "I am going to apply to the regional review board for an order to override your refusal of treatment." They can take many steps objected to by the patient they wish to serve.

This aspect of the relationship does not exist in the doctor-patient relationships you and I enjoy in the community. If we do not like what our doctor prescribes for us, we can throw it out. If we do not like the doctor's bedside manner, we can go to another one. Under the Mental Health Act there is definitely a coercive side to the practice of psychiatry and one that everyone agrees is, and should be, subject to reasonable limits that preserve the rights of the individual.

I understand Bill 7 concerns itself specifically with the equality provision of the charter, section 15, but to deny psychiatric patients as a class the protection of other charter sections, in my submission, violates section 15 as well. They are entitled to equal protection of the law, including that of those other sections of the charter. They include section 2 on fundamental freedoms. "Everyone has the following fundamental freedoms," including "freedom of thought." It has been argued in the United States, which has similar provisions, that the enforced imposition of powerful mind-altering treatments can interfere with constitutional and protected freedom of thought.

Legal rights are in section 7, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." We are concerned here with the right to liberty. One can argue that security of the person has to do with making personal decisions about what treatments you will and will not accept.

Section 8 says, "Everyone has the right to be secure against unreasonable search or seizure." Section 9 says, "Everyone has the right not to be arbitrarily detained or imprisoned." The task of any legislation is to provide checks and balances and quantifiable criteria for detention so that detention does not become arbitrary. Section 10 says, "Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor," and to "instruct counsel without delay."

4:20 p.m.

Under section 12, "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment." It is not just cruel and unusual punishment, but "cruel and unusual treatment or punishment."

In our experience, looking at Ontario and other jurisdictions, the

charter rights of the individual can be accommodated in a province's mental health act without disabling that act and without crippling any of the legitimate aims of that legislation.

For example, Nova Scotia, unlike Ontario, provides that the doctor cannot override the refusal of a competent psychiatric patient. If you are a competent psychiatric patient in Nova Scotia and you understand the nature of the treatment and the pros and cons of accepting or refusing it, your decision thereafter has to be respected.

In the Yukon Territory, there is a court review of involuntary committals within 24 hours. This committee is looking at legislation that would require the board to attend within seven days of the initial five-day detention, which makes it 12 days, but the Yukon has provided for 24 hours.

In our own Child and Family Services Act, 1984, which in many ways is the leading edge of legislation recognizing the rights of the individual, sections 120 to 122 deal with secure isolation, a species of restraint. They spell out the criteria that must exist before a young person can be locked in isolation. They state that there has to be a danger of "serious property damage or serious bodily harm in the immediate future," and that no "less restrictive method" of restraining the child is practicable. It is not left to the discrimination of the individual health care provider; it is spelled out in legislation in a workable system.

It has been suggested that if steps are taken to further enhance the rights of psychiatric inpatients, this will discourage psychiatrists from entering or remaining in the public service; that is, the practice of psychiatry within our mental health system. I do not believe that is borne out by the facts and I do not think that suggestion really serves the people in our mental health system who work to provide for people who are the most ill.

In Ontario, our 10 provincial psychiatric hospitals receive 80 per cent of the involuntary admissions. In any given provincial psychiatric hospital, on average, 45 per cent of the patients are involuntary. As you will expect, if you have a high proportion of involuntary patients, you get all the action at the regional review board, people challenging their committals and resisting treatment orders, which can only be imposed on involuntary patients.

These are the hospitals that have had patient advocates for the past three years. They have regional review board hearings and they have the new rights adviser programs, and yet there are more psychiatrists in the provincial psychiatric hospital system now than there have ever been.

Psychiatrists I talk to say they could go into private practice and administer to the worried well, as they have been described, on St. Clair Avenue. However, they derive satisfaction from working with the most seriously ill patients, in whom they can see the most remarkable changes in a short period of time and on whose lives they can have the most noticeable impact. It does discredit to psychiatry to suggest they will flee the system if patients' rights are enhanced in sensible ways.

Obviously, we will not be discussing the proposed amendments in any detail in a clause-by-clause fashion; that is for the committee. However, there are broad categories or topics that are convenient as a means of categorizing the issues. I would now like to turn the floor over to Carla McKague to discuss some of them; then I will discuss some more.

Ms. McKague: I have given you a fairly lengthy written submission. I am going to try not to read it to you, but to summarize, to skip back and forth in it. I want you to know, first, as my submission states, that I am really sorry this is today instead of last Thursday. Last Thursday, my horoscope in the Toronto Star said the people who made the laws would agree with me. You picked the wrong day to sit or the Star got its dates mixed, one or the other, I am afraid.

Mr. Callanan: Just as long as the Toronto Sun did not say it.

Ms. McKague: I do not read the Sun to find out.

Last week, I was very interested by the submission made by the Ontario Medical Association. I do not know Dr. Saunders. I have known Dr. Hoffman for a while. My first introduction to him was when he was an expert witness on the opposite side of a case I was handling, and a very fine witness he was. I know Dr. Hoffman is a very knowledgeable and sensitive physician, one who is very concerned with the civil liberties of his patients. I do not think the OMA could have sent you a finer representative.

Therefore, I am rather worried that he seems to be interpreting the intent of some of the amendments before you in a way I do not think is justified. What I mainly want to do today, on the particular topics with which I am dealing, is to try to respond primarily to the OMA submission.

We have already told you that today we are voicing the opinions of a large number of other organizations, I venture to say practically every other organization in Ontario that is concerned with the rights of psychiatric patients. It is important for you to realize there is that broad base of support for these amendments from people who, on that side of the question, are as knowledgeable as the OMA and the Ontario Hospital Association are on its other side.

I want to address the question of admission procedures. It may be helpful if I start out by describing, in a little more detail than you have perhaps heard, how people get into psychiatric hospitals. There are a lot of ways. There are three primary ways, outside the criminal system.

The first is that any doctor, whether he is at a psychiatric facility, is at a general hospital, is your general practitioner in the community or is your dermatologist, for that matter, can fill out a form--call it form 1--which gives authority to any person to escort you to a psychiatric facility where you are to be held for five days for assessment, 120 hours to be specific. The hospital does not have to fill out any more forms. It can hold you on that one signed by the original doctor for 120 hours. By the end of that time, you must be involuntarily committed, made informal or discharged.

Second, if anyone in this room believes that anyone else in this room meets the criteria for commitment, which I suspect may be a possibility, you have a simple remedy. You can go to a justice of the peace and swear out an information to the effect that you believe another person to be mentally disordered and to be presenting a risk, as laid out in the Mental Health Act. If you can persuade the JP, he will issue a form 2, which will allow the police to take that person and escort him or her to a hospital, where he or she will be briefly examined by a physician at the facility. If he agrees, a form 1 will be signed and, again, the person will be held for five days for assessment.

The third way is by the direct action of a police officer when there is someone who appears to meet the usual criteria for admission and, in addition, is behaving in a way that in a normal person would be considered disorderly, and the police officer thinks it would be dangerous to take the time to get an information from a JP. The police officer may escort the person directly to a hospital where he will undergo a brief assessment by a doctor, who will sign a form 1 if he believes the person should be kept for assessment.

All these routes end up with the person being held for five days on this form, which is an application for psychiatric assessment.

My understanding of what went on in 1978, in the last major revision of the act, is that there was a very kind reason for providing this five-day period. A number of people felt the experience of being involuntarily committed to a psychiatric hospital was not only pretty unpleasant but also stigmatizing. It certainly is. To have been an involuntary psychiatric patient is something people do not like to talk about very much.

4:30 p.m.

It was felt there should be a good assessment by someone at the hospital, as opposed, for instance, to a community physician, who could be your dermatologist, as to whether the person required commitment. If he did not, you could let him go within that five-day period and he could then quite honestly say he had never been committed.

The trouble is that it did not work out that way. The distinction that on paper seems clear is not a distinction that is made in the mind of either the patient or the public. If you have been taken to Queen Street by a policeman, held for three days and then let out, you are as truly stigmatized as if you had been committed. I was chatting with Dr. Hoffman after the committee session last week and he agreed with me totally on the point that there is no difference in the stigmatization effect.

Another concern at the time may have been that prior to 1969, your dermatologist could sign a certificate that would keep you committed for 30 days, provided this intervening assessment period allowed that decision to be reviewed by a physician who was skilled in assessing mental disorders. A community physician could not detain you for longer than five days on his certificate. That concern would not be relevant to the present amendments. I just mention it in passing, as another rationale for what was done in 1978.

The problem that patients and we, as their lawyers, have with a form 1, and I think this has already been made clear, is that you have five days' deprivation of liberty. There is just as much deprivation of liberty as if a commitment had been carried out, but you do not have the legal remedies available to you that are available on a commitment. Yes, you can apply for habeas corpus, but habeas corpus is complicated and very technical, whereas going to the review board is not. You need a lawyer for a habeas corpus application. You may want, but you do not definitely need a lawyer to go to the review board.

Besides that, a form 1 does not trigger the provision of rights advice at this point, so you may not even know you have a right of habeas corpus, let alone be able to exercise it. When Dr. Hoffman spoke to you, he conceded a lot of these points. What he said to you was: "Let us retain form 1 and the distinction between the forms, but let us give the people all those things on form 1. Let us give them the rights advice and the right to go to the board right away."

As we were chatting last week, he told me one of his concerns about getting rid of the form 1 was that it would make the initial detention period longer. The first form 3 period is for two weeks. He was concerned that if we got rid of form 1, that would result in people being held for a longer period.

A lot of these things are technicalities. I do not think it matters what number is on the piece of paper you sign. What matters, and what the OMA and we are in agreement on, is giving people all the legal protections right away. That is required by the charter. If you as a committee have a better mechanism, that is fine. We are suggesting that the simplest mechanism is to abolish the distinction between the two forms. If you prefer to do it in some other way, that is also fine. What is important is that from the moment the person walks in the hospital door, he should have the protection of the law.

The other point Dr. Hoffman raised with you, which was debated at some length, was that you cannot do an assessment within six hours. If what he is talking about is a full psychiatric assessment, of course he is absolutely right, but psychiatric assessment is not something that starts and stops. It is an ongoing process. When you go from a form 1 to a form 3, the doctor does not magically stop assessing. He is assessing you all the time. What he is supposed to do in that initial assessment is to figure out whether you need to be involuntarily detained.

He already does that. When he does it now and if he decides you should be, the outcome is to sign a form 1. What we are suggesting is that when he does it and decides you should be, the outcome would be to sign a form 3. The call is on whether you need to be kept in and the assessment takes place thereafter.

The courts send people off very frequently to forensic wards for what is called a brief assessment of fitness to stand trial. That is similar to what we are talking about here because it is not a full psychiatric picture. It is a limited finding, a one-dimensional finding: "Is this person fit to stand trial?" as compared to, "Should this person be detained?" The forensic wards do those examinations routinely in an hour or two. It is not difficult unless you interpret assessment as meaning, "Let us know absolutely everything about this person's psychiatric state." Sections 7 and 15 of the charter are the ones you have to examine here.

Section 7 says you cannot be deprived of liberty without regard to the principles of fundamental justice. Nobody has quite figured out exactly what fundamental justice is, and I think it is going to be a long time before they do, but certainly we know some of the ingredients. Some of the ingredients are a right to hear the case against you--in this case it would be why you are being held--and the right to answer that and have it tested before an impartial arbiter. Our present legislation gives you no right even to seek out that arbiter until the sixth day you are in the hospital. Even with the amendments proposed by the Attorney General (Mr. Scott), what is going to happen?

You are admitted on day 1, on day 6 you make your application, give it to hospital staff and ask them to get it to the review board. They pop it in the mail. It gets to the review board on day 8, day 9, or if you have a long weekend, day 10, and even with the Attorney General's amendments, you are heard as long as seven days after that and get a decision still a day later. You are effectively looking at two and a half weeks from the day you walked in until you have a review of your detention.

The proposal before you is not nearly as radical as some of the things other jurisdictions have done, such as the Yukon's 24-hour review. We are suggesting that period be cut by five days, by letting a person launch his request for a review the day he walks in the door.

I would remind you in this context that involuntary commitment in itself is on the face of it a charter violation. The only people who can be deprived of liberty on the grounds they might do something dangerous are people with a particular disability, namely a psychiatric disorder. So if we are going to deprive a particular group of liberty in a way that on the face of it offends section 15's guarantees of equality, I think we must be particularly careful to provide all possible safeguards to that route. Deprivation of liberty is very serious indeed. If we are going to justify it at all, we have to take the greatest possible care in doing so.

Perhaps the most contentious issues discussed by the Ontario Medical Association are the whole area of competence to make treatment decisions and the consent to treatment. The only submissions, both written and what Dr. Hoffman had to say, were very critical of some of the amendments. When Dr. Hoffman was addressing you, he said this area was very complex; it was one in which there should not be hasty decisions, and there should be long and thoughtful consideration. I have forgotten the exact words, but that was the sense of what he had to say.

4:40 p.m.

What he did not tell you is that it has now happened twice with two different bodies associated with this Legislature. One of them was the Ministry of Health's Electro-convulsive Therapy Review Committee, and I want to get back to that in a moment and discuss it a bit more.

The other, about which I am much less knowledgeable, was the advisory committee on substitute decision-making for mentally incompetent persons, which is a triministerial committee of the Ministry of Health, the Ministry of Community and Social Services and the Ministry of the Attorney General. Gilbert Sharpe, who is counsel to the Ministry of Health and who is here today, has been a representative on that committee, and I hope that you will question him in more detail. The point I want to make is that philosophically the conclusions of that committee, which I understand is now preparing draft legislation, are very much in accord with these amendments and in some ways go even further. They would request a court determination of incompetency to make decisions about medical treatment rather than a tribunal determination, so that body has seen the need, in some respects, for even greater safeguards.

The Electro-convulsive Therapy Review Committee was appointed by the Minister of Health in 1984, and it was to consider all aspects of the use of electroconvulsive therapy in Ontario. It met for about 14 months and handed in its report in December. It stated in that report that although what it had been mandated to do was look at all aspects of ECT, legal, procedural and medical, its recommendations about consent and competency should apply to all psychiatric treatments because there was no particular reason for singling out ECT.

There were 16 members on that committee. I had handed out to you a small package which lists those 16 members on the front. The rest of the package comprises the actual recommendations made by the committee on consent and competency. If you look down that list, you will see that four of the people on it are physicians and two of them are psychiatrists. I might add that one

of those is a psychiatrist nominated by the Ontario Medical Association and the other, if I remember correctly, by the Ontario Hospital Association.

A further three people were actively working at providing care to psychiatric patients. One is a clinical psychologist who is also a professor of psychiatry, one is a hospital administrator and one is a head nurse at a provincial psychiatric facility.

One is a professor of bioethics, four are lawyers, and one is the executive director of a branch of the Canadian Mental Health Association. There are two lay representatives, but even they have some medical expertise. You will note that one of them is the executive director of a centre for the re-education of alcoholics and the other is an registered nurse.

I was honoured to be one of the lawyers on this committee, and I can tell you that competency and consent were canvassed very exhaustively; in fact, some committee felt exhaustingly. Since the report appeared, I have been told, and so have other members of the committee, by a number of doctors and lawyers, that they have never seen a more thoughtful and a more thorough examination of those issues.

The recommendations that you have before you were endorsed unanimously by that committee. I do not expect many of you will have time, but I hope that any of you who have not read the report will get a copy of it and will read the chapter on competency and consent. You can get a sense of how the issues were wrestled with and what was taken into account. This is the result, the recommendations that I believe are mirrored faithfully in the amendments put before you by the NDP.

I would like to examine some of the specific concerns that Dr. Hoffman raised. He said, first: "Well, physicians make competency decisions about their patients when it comes to medical or surgical treatment. Why should it be different for psychiatric treatment? Why do you want somebody other than physicians making this determination?" I would respond to that by saying I am not sure they should be making them for medical or surgical treatment either. Some of the same considerations arise, and I think the substitute decision-making committee may have reached some of those conclusions. However, there are also some special considerations in the area of psychiatric patients, and one of them is well illustrated by a quotation from the document that the Ontario Medical Association put before you. It said, "One might question whether any involuntary patient is competent to understand what is happening or what decisions are appropriate." That is a point of view which this province rejected emphatically--quite rightly--a long time ago.

The criteria for deciding whether someone needs to be detained have almost nothing to do with the criteria for deciding whether someone should make decisions about his treatment. Mental disorder does not in itself deprive someone of the ability to decide what is best for him medically.

But we have a lot of doctors in this province who think otherwise and who are still working on a very old philosophy of care of the mentally disordered, which says, "If you are crazy enough to be committed, we can do anything we want to you because you obviously are not deserving of any autonomy."

I report in what I have given you an extreme example of doctors who think this way. I have also said it is not atypical. I have run into this kind of thing a number of times. I was representing an involuntary patient in one

of the provincial institutions, and he was being forcibly treated. I talked to him, I read his file, and I went to his physician to talk with her about the case. I said, "By the way, do you consider Mr. Smith"--as we will call him--"competent to make treatment decisions?"

She said, "No, he is not competent." I asked, "Well, do you have a consent from his nearest relative?" She said, "No, he does not have any family." I said, "In that case, you must have an order from the regional review board." She said, "No, I do not have any order." I asked, "Then on what authority are you treating this man?" She said, "I do not need authority; we have dozens of them in here."

That kind of attitude is much too common in a number of our facilities. Not every psychiatrist out there is as sensitive and caring as Brian Hoffman. Over and over again, I find in representing people who are in there against their wills--in this case even those who are not in there against their wills--it does not matter how disturbed or disoriented they are, whether they even know they are in hospital; if they swallow the pill when you hand it to them, they are treated as competent. There is no decision made. The question does not even arise in the doctor's mind, as long as the patient is being compliant.

As some of you may know, Dr. William McCormick is the former director of education at the Queen Street Mental Health Centre, and a few years ago he wrote an article in Health Law in Canada, and I would like to quote just a little bit of that article. I have forgotten the exact title. It was something like "Informed Consent in Psychiatric Practice," and the line goes:

"To declare people with mildly impaired judgement incompetent to give consent and then seek surrogate consent from relatives is likely to disrupt the therapeutic relationship."

Then he suggests that since these people really are pretty shaky when it comes to competence, you should not tell them all the facts about their treatment because then they might refuse it. Dr. McCormick is suggesting doctors take a consent and act on it when the consent is neither competent nor informed, and I put before you that is a pretty shaky position.

4:50 p.m.

Perhaps the other side of the coin is the frequent experience of a client whom you and the doctor and everyone else have been treating as competent up until the moment he says, "No, I do not want that treatment," and all of a sudden, in an instant, the doctor waves a magic wand and the person is now incompetent, so that the doctor may go and ask a relative. They will hardly ever go to the review board on the provision that says you can override a competent patient without first trying to declare the person incompetent and seeking family consent. It is a lot simpler.

A case I handled back in late 1984 was the impetus for forming the Electro-convulsive Therapy Review Committee in the first place. My client refused treatment, competently. The doctor then treated her as incompetent and asked her husband to consent. He refused. The doctor did not give up. He then asked her father to consent and the father refused. He asked her brother to consent and the brother refused. Only then did he do what he should legally have done in the first place, call a treatment hearing.

The point I am trying to make is that a doctor's decision about whether

his patient is competent will be highly coloured by a totally irrelevant consideration, whether the patient agrees to the treatment or not. That is a not an index of competency.

There are a couple of other reasons doctors should not be making competency decisions. First, it is a legal decision, not a medical decision, and one our courts make every day in other contexts. We decide in courtrooms whether people are able to handle their money, whether they are competent to be tried for criminal offences, or whether they are competent to be witnesses in court. It is not strange to have these matters handled judiciously--judicially, pardon me. Judiciously is a little stranger.

Courts use psychiatric evidence to help them make these decisions and that is as it should be. Psychiatric evidence at the proposed board determinations of competency is a wonderful idea. However, that evidence has to be weighed in conjunction with other factors.

Dr. Hoffman said one of the reasons psychiatrists are best equipped to make these decisions is that they are skilled at things like recognizing delusions. Presumably they could do that better than a review board. Delusions have a great effect on competency.

I have had a number of experiences in which psychiatrists characterized things that were perfectly true as delusional. I had one client, for instance, whose file reflected the grandiose delusion that he had written a book. It was lucky for him I owned a copy of the book.

Another client had a notation in his clinical record apparently reflecting the doctor's belief that he had been convicted of wounding and that he had delusions about people attacking him with Kung Fu sticks. When I checked the facts, I established that he had been acquitted of wounding because he was defending himself against people attacking him with Kung Fu sticks.

A couple of examples hit the press. In the early 1970s, a young woman found herself in a provincial institution because she had almost the same name as the person who should have been locked up. She was held for two or three days because they said her belief that she was not the person they were after was delusional.

Finally--I should not say finally because I could give you these all day--also back in the early 1970s a gentleman was arrested for firing a shotgun in a public park. He was asked why he had fired the shotgun. He said, "I was chasing these drug pushers who enticed my daughter away from home." They figured he was delusional and held him for months as unfit to stand trial. In fact he was after drug pushers who had lured his daughter away from home but because he was not believed, he did not get a trial for months. He was held in Penetang as unfit.

A review board presents a forum in which the patient at least has a crack at establishing the truth of what the doctor says is delusional. It seems to me that many psychiatrists assume that if it is unlikely, it is also untrue and the patient cannot re-establish credibility.

Dr. Hoffman was also concerned that, if these procedural protections around competency hearings were brought in, needed treatment would be delayed. Seldom, if ever, in my experience, is psychiatric treatment a matter of extreme urgency. It is not like having to get your appendix out because it is

going to burst or having a shot of insulin because you are in a diabetic coma. If such an extremely urgent situation exists, there are emergency considerations in our law at all times that can handle it.

Dr. Hoffman supported the amendment of the Attorney General (Mr. Scott) and said, "Yes, if I find somebody incompetent, he or she should be able to appeal that to a board." That delays treatment. Currently, an incompetent involuntary patient without a relative, or whose relative has refused, and a competent patient who has refused, cannot be treated until a board has so ordered. If you have an incompetent informal patient without a nearest relative, he cannot legally be treated at all without a court order.

Therefore, in some cases, these proposed amendments would actually speed up the treatment of someone. Where it slows down treatment, the additional delay is very unlikely to put the patient at serious risk.

I had real trouble with Dr. Hoffman's suggestion that there was something bizarre about a doctor asking a patient to name a proxy in case he became incompetent. This is described in the Ontario Medical Association brief as "a bizarre way to begin a therapeutic relationship." I cannot see how it could be damaging to a doctor-patient relationship. If anything, I believe it would be helpful. I would feel very reassured to know that if things went wrong while I was in there and I could not make decisions for myself any more, the person I wanted making those decisions would be doing it.

When we go to the hospital for medical or surgical reasons or whatever, we are routinely asked about our next of kin. We know why they are asking us. It is not idle curiosity. First, they will know who to call if we die, and second, they will have someone to take orders from if we become unconscious or incompetent. I doubt whether that ever disrupted a doctor-patient relationship. I cannot see why asking this question instead of that one would make any difference.

Dr. Hoffman is correct in saying that when the board names a proxy decision-maker, it has a responsibility to ensure that the proxy is mentally competent. He seems to see that as a big problem, but doctors have to do that now. It is really the same issue. A doctor is not going to take a proxy consent from a family member who clearly is not mentally competent. I see no real problem in the board's taking over that part of the responsibility as well.

Dr. Hoffman says there is little evidence that family members have made poor decisions in the past as proxy decision-makers. Why should we be taking this responsibility away from them? My first question is: Why, if they have not been making poor decisions, has there been a fair number of applications by doctors to review boards to overrule family decisions? Second, the definition of a poor decision may vary depending on whether one is the patient or the physician. Third, in many cases, you would end up with family members as the designated proxies. They are not designated as such only because of an accident of birth or--I guess I cannot say "accident of marriage"--because they are somehow related. They are chosen not only because they are family members, but also because they are, objectively, good people to be doing this.

5 p.m.

I have also run into many situations in which family members do not want to make decisions. They feel torn. On the one hand they see their loved ones suffering, hearing voices, or whatever. They want to alleviate that, but they

say to me, "If I consent, he is going to be so angry at me later and it is going to alienate and estrange us." That burden should be removed from family members who do not want it.

I know one psychiatrist in Ontario who I have told that what he is doing is quite illegal, although morally I sympathize with him. He does not go to the family. If he has an incompetent patient, he says he is not going to put the family through the agony of making the decision and he goes straight to the review board.

Right now, a decision is made about who decides on your behalf by going down a checklist in the act. There is a definition of "nearest relative." There is an alternative definition of "nearest relative" before you in the amendments from the Attorney General. Problem one, as I have already suggested, is that family members may not be the most appropriate decision-makers, whether because they do not want the responsibility or for other reasons.

In one case with which Mr. Giuffrida and I are familiar, consent to electroconvulsive therapy was given by the estranged husband of the patient, whom she was divorcing for cruelty. I doubt that decision was made on proper principles. It may have been the correct decision, but I do not believe he was awfully concerned about whether it was going to help her.

The Attorney General's amendments would take out or at least limit that abuse, because to be at the top of the list now you have to be married to and living with the person. I do not think the considerations are all that much different for families living together but that are under a lot of stress and are internally torn, or for the one in 10 Ontario women who gets battered by her husband.

The other problem is that neither the Attorney General's list nor the current list always specifies a unique individual, so that the doctor and no one else knows who has the right to give instructions. In my own case, for instance, my nearest relative would be one of my three children. Which one? Is it the first one the doctor asks? Can he go shopping until he finds one who agrees with him? Should he take a majority vote? If he takes a vote, what happens if one abstains and the other two vote in different ways? It simply does not provide legal protection to the doctor or to anybody else. We suggest that to have a specific individual designated could save everybody a lot of worries on that score.

The most puzzling of Dr. Hoffman's comments is reflected in the OMA's submission. He said that if these amendments were passed, they would produce a situation in which nobody was accountable for a poor decision about treatment. He said the doctor is now accountable for these decisions, but that somehow nobody would be accountable if these amendments were passed. That seems to suggest that somehow these amendments would dramatically alter the role of the physician, but I am not sure how.

Right now, and this would continue to be the situation, a physician is accountable for negligent or illegally performed treatment. Right now, and this would continue to be the case, the physician may treat when authorized to do so by a person or a review board that is legally mandated to authorize him. He is obviously going to incur no accountability for failing to carry out treatment he was not allowed to perform.

A proxy decision-maker at this point, whether the board or a relative, has accountability for his decisions and would continue to have accountability. Only the people playing those roles would change. Instead of being the competent patient and the incompetent patient's nearest relative and the review board, the people authorized to consent to authorize the doctor to treat would be the competent patient and his legally authorized proxy. That is the only difference.

The OMA did not address the amendment that suggests that whoever the proxy decision-maker is, where possible, he should make his decision on the basis of the patient's wishes when competent. I suggest, however, that their approval of that standard is strongly implied in their written submission. One of the arguments they raise for continuing to have families as the proxy decision-makers is, "Who is better to know the wishes and desires of the patient?" Even though they have not addressed that directly, they have implied it strongly.

I will let you take a look at the charter arguments for yourselves. They must be fairly obvious by now. Sections 7, 12 and 15 are the ones you have to worry about.

I want to move on to restraint. The two amendments dealing with restraint are before you in a form that is probably a little confusing. That is because what is before you are actually two alternative forms of an amendment. I want to try to lay out the issues a bit more simply.

There are two different problems addressed in these amendments. The first is that our act does nowhere states the circumstances in which it is appropriate to restrain a patient. It says only that patients may be restrained. The amendment suggests that those circumstances ought to be defined to prevent unwarranted restraint.

From being out there a lot, I can tell you there are numerous occasions on which restraint is used for totally inappropriate purposes. You may disagree with the criterion proposed in the amendment, which is to prevent serious bodily harm to the patient or another person. One alternative was just read to you from the Child and Family Services Act, serious bodily harm or serious property damage. However, I hope you will not disagree with the principle of the amendment, which is that you cannot deprive a person of liberty and security of the person by grabbing, restraining, drugging or whatever for trivial reasons.

The Ontario Medical Association has laid out a list of other circumstances in which it thinks restraint would be appropriate. I ask you to look at those suggestions, weigh them against the charter interests and reach a conclusion on when restraint is justified.

I want to give you an incident from my own experience as an indication of how much jeopardy the lack of definition in the act can put people in. I saw part of this myself and the balance of it was reported to me by a reliable employee of this government.

A patient in a provincial facility had a temper tantrum and she kicked a door. She kicked the door very hard. She then walked away. She very quickly calmed down and there was no further behaviour of concern. Two hours later, several staff members came to the common room on the floor, where she was sitting. They escorted her to her room, placed her in four-point restraints and placed her under heavy medication for 24 hours. She was going back and

rotation between being groggy and being unconscious. In the middle of all this, not surprisingly, she became incontinent; she was wetting the bed. During her periods of more or less being conscious, not only was she terrified but also she was humiliated and ashamed by the whole experience.

Both the observer and myself felt the restraint was totally unnecessary and unjustified. Certainly, there is no way the double use of physical and clinical restraints could be justified. What was going on was that the staff was mad at her. I am not suggesting this is commonplace; I am suggesting it is not an isolated incident. It represents the extreme of a pattern of using restraint in most inappropriate circumstances. That is concern number one: to define when people will be allowed to restrain.

Concern number two has to do with kinds of restraint. There are three kinds of restraint allowed in the act. There is physical restraint, which can be physically holding or isolating the person. Mechanical restraint is using wrist-cuffs or ankle-cuffs. Chemical restraint is sedating with drugs.

5:40 p.m.

I should mention that about a year and a half ago, one of Dr. Hoffman's colleagues published a paper in one of the journals suggesting that electroconvulsive therapy should be used for restraint as well, that the law should allow ECT to be used for restraint. The ECT review committee threw out that suggestion roundly, as I think almost everyone else has.

Dr. Hoffman indicated to you that about 90 per cent of restraint now is chemical. One of the boasts of psychiatrists is: "Because chemical restraint is available, we do not use straightjackets any more and we do not have to chain people up. Some pretty nasty methods of restraining people have gone away because of chemical restraint. We have effectively disposed of things."

My own favourite is something called the cold-wet pack, which was used in Ontario until at least 1960. You took a distraught and screaming patient, stripped him naked, laid him on his bed and wrapped him around with bedsheets soaked in ice water to bring his behaviour under control. You had to monitor his vital signs every 15 minutes because it could kill him. Nobody is suggesting we go back to that kind of atrocity that was going on in our facilities at that time.

However, chemical restraint also has its problems and they have to be recognized. Dr. Hoffman spoke of how upsetting it was for a family to come in and find a family member in cuffs, tied to the bed. I have had a lot of calls from family members who say: "I was in to see my daughter"--my husband, my father or whoever--"and she is a zombie. She is falling asleep when I talk to her. She cannot concentrate. She does not understand what I am saying. She is twitching all the time. She cannot sit still. She has to be up moving around the room. It is terrible. Can you not get them to stop using those drugs?"

Chemical restraint does not just slow people down. It can have some disturbing, disorienting and often painful side-effects. That must be recognized. The main difficulty is that the drugs used for chemical restraint are the same as the drugs used for treatment. The vast majority of physicians does not make a distinction between restraint and treatment. I want to get back to that in a minute.

The two alternative recommendations, the amendments proposed before you, are a very dramatic attempt to cure this by saying, "Let us not use chemical

restraints at all because the potential for abuse is so great." Then there is a much more moderate version that says: "Let us recognize that chemical restraints have their use, but let us require by statute what doctors and other staff members should already be doing legally and ethically. Let us make them differentiate between treatment and restraint. Let them put that down in the file and say, 'This needle or pill was for restraint and this is why we had to restrain.'"

I think even Dr. Hoffman falls into this trap. He told you last week that one of the wonderful things about chemical restraint was that it could take away people's voices and delusions. I put it to you that hearing voices or having delusions is not a justification for restraint. If you are giving people medication to take away voices and delusions, you are treating, and the distinction is important.

I recall an occasion when, within 15 minutes, I spoke to two different doctors treating one of my clients. My client was sedated to the point of unconsciousness. I was trying to find out what was going on. I asked one doctor, "Are you treating her or restraining her?" He said: "We are restraining her. We do not have any consent to treat." I asked the other doctor, "Are you treating her or restraining her?" He said: "We are treating her. There is no reason to restrain her." These are two doctors, at the same time with the same patient, and they did not know which they were doing, or they were giving me whichever answer they thought was less likely to cause legal repercussions.

A few years ago, I also sat through an inquest several days long on a young man who had died as a result of very heavy chemical restraint. One of the parts of the testimony that upset me a little bit--there were a lot of parts that upset me--was when the treating physician was asked, "Why did you give him these gigantic doses?" We are talking about 15 to 20 times the recommended maximum dosage. He said, "You know, this really is not an awfully good drug for restraining people, so we had to give him a lot." They asked, "If it was not an awfully good drug for restraining people, why on earth were you restraining him with it?" He said, "Because it is a good drug for the treatment of his condition."

Again, you get this real overlap and ambiguous situation. The result is that when my clients ask, "What can I do to keep from being chemically restrained?" I do not have an answer for them. I should be able to say, "Keep your nose clean, do not hit anybody, do not break the furniture, and they will not restrain you." I cannot give them that assurance. Whatever they do, they are likely to be subjected to medication they have not consented to. The only advice I can give them is, "If they come at you with that needle, do not fight back, because that will give them justification to give it to you."

We are not asking that restraint be abolished. We are keenly aware that there are situations when patients do get out of control, become violent or become very aggressive. The amendments ask that you ensure it is used when it is necessary, only when it is necessary, and that it does not end up being a way of imposing treatment to which nobody has consented.

I have a very short comment on the limitation period issue, which the Ontario Medical Association has simply said it agrees with. Currently, the psychiatric patient who wishes to bring an action against his physician, his hospital or, for that matter, anybody else involved in the process--it could be the justice of the peace who brought him in there, a family member or whoever--has six months from the time of the event to do it.

The person in a public hospital, a general hospital, who wishes to sue his hospital has two years from the time treatment ends. That same person in a public hospital who wishes to sue his doctor has a year from the time when he had sufficient knowledge of what went wrong to enable him to form an opinion as to whether the physician was negligent.

I am putting it loosely. Those are not the exact words. In brief terms, on the one hand, you have six months from when they did it to you. On the other hand, you have two years from when you get out of the hospital after they did it to you, or one year from when you find out they did it to you.

It is an absolutely clear Charter of Rights violation. There is no reason for it to be there, and I cannot imagine that this committee is going to have any trouble with the question of the limitation period.

Before I turn it back to David, I want to echo something he said. The amendments before you are neither wild-eyed nor radical. They are reasoned, they are temperate, they are an attempt to bring this bill into line with the guarantees of the charter. They are a logical continuation of what this Legislature did in 1978.

Back then, even without the impetus of the charter, you and your predecessors recognized that there were some very important freedoms and civil liberties at stake here. In 1978, you enacted what at that time was the most enlightened and progressive mental health legislation in Canada. I am hoping you are going to go on this time and take the next step.

Mr. Chairman: Thank you very much. David, you may want to summarize some of the points.

5:20 p.m.

Mr. Giuffrida: I would like to refer the committee very briefly to submissions made by the national office of the Canadian Mental Health Association and its Ontario division, not to this committee but to the Uniform Law Conference of Canada, regarding the draft uniform Mental Health Act. I will not go into it, other than to say it is an ambitious attempt on the part of the Uniform Law Conference of Canada to make one uniform Mental Health Act for the whole country; an ambitious but, I am sad to report, quite flawed attempt.

The comments the CMHA has made about that legislation are quite relevant to many of the issues before us now; for example, duration of assessment. This committee is grappling with the issue of whether it should be 120 hours, six hours or forthwith. The CMHA's task group on legislation had only a short while in which to respond, and it says the comments do not represent the final position of the task group but that of everyone who attended.

They say: "It is unacceptable that a person being detained on the basis of predicted behaviour should have fewer rights than a person accused of a criminal offence. The recommended solution is to eliminate the so-called assessment period or at least to reduce it to a much shorter period. While the group did not agree on precise timing, terms such as 'forthwith' and 'less than 24 hours' were suggested. A general guideline is that a person should be committed and gain access to review rights and counsel if he or she is to be held overnight."

On the topic of restraints, they say that wherever more than one means

is authorized, and currently three are in Ontario, the person to be restrained should be allowed to choose the means, which is not actually a suggestion that is before you today, but it is also essential that the use of restraint be documented.

On the subject of who should make decisions concerning treatment when the patient is incompetent to do so, they say: "There was considerable discussion of the suggestion that review boards should not be empowered to make treatment decisions at all. A better alternative would be to invest more time, care and procedural protection in the appointment of proxy consent givers." On that point, they adopted the recommendations of the Electro-convulsive Therapy Review Committee to which Ms. McKague referred.

The CMHA Ontario division said, "Making competency decisions appealable provides recourse not only to competent persons who have been wrongly declared incompetent, but also to incompetent persons who are treated as competent so long as they continue to consent to treatment orders."

Concerning the use of restraints, they say the definition should specify under what circumstances restraint is authorized. The point we make is that the circumstances under which you can use restraints are not currently spelled out in the Mental Health Act. They are in the draft before you from the New Democratic Party. That draft does not mention damage to property, as does the Child and Family Services Act.

The actual criteria are something the committee could decide, but I suggest and the Ontario CMHA suggests that they should be spelled out to limit the abuse of the use of restraints.

They say categorically that treatment must not be administered over a competent refusal. That is the situation in Nova Scotia. Unfortunately, in Ontario there is now a procedure whereby somebody who is competent to make treatment decisions can have his autonomy compromised and that competent refusal overridden.

On the point of making a uniform limitation period of two years, I should add that the brief by the Ontario Medical Association has no argument with that provision either. I do not suspect that will be the subject of much debate.

I want to comment briefly on two or three other areas. You will find some of the amendments proposed by the Attorney General (Mr. Scott) and by the NDP are of a technical, procedural nature. Currently, for example, the parties to an appeal have 30 days in which to file. Staff have lamented that they get a treatment order, the patient appeals, and then the appeal process is really long and drawn out. The amendments proposed by the Attorney General would shorten the time in which to perfect an appeal; 30-day periods are reduced to 10 days, for example. I think the wisdom of that will commend itself to the committee.

I am afraid some parts of the New Democrats' amendments are less accessible but still quite important. They concern the status of a person pending an appeal. What is the status of a person who has gone to the review board once and then filed for an appeal, for example? Can he go back to the review board? I suppose it is sufficiently difficult that the OMA simply said: "The changes proposed here do not add anything to the authority or to understanding. It appears that they are supplementing a simple statement with many more words that may be more confusing."

If the situation were that simple, you would not have to dwell on it longer, but the current situation, the status quo in Ontario, is unsatisfactory. Basically, section 32 of the Mental Health Act says that if a party to a review board is appealing the decision, the status quo is preserved. None of the details, such as what you do with the person pending the appeal, what happens if a certificate expires before the appeal is heard or what happens if a person has another opportunity to go to the review board, is dealt with by section 32. Important rights of the patient that should be protected are not.

Under the Mental Health Act, every time a person is put on a certificate of involuntary admission, he has a right to go to the regional review board. If he is on a two-week certificate, he can go to the board. If he loses and then is kept for a month on the next renewal, he can go back to the board. There is nothing abusive about that, because the psychiatric condition of the person is a fluid thing and will change. The fact that the board deemed the person to be dangerous and required him to remain in hospital at one point says nothing about the success he will have at the board on a subsequent occasion.

Unfortunately, with the status quo under the Mental Health Act, which would remain under the Attorney General's amendments, the person is given a very difficult choice. If he has gone to the board and lost an appeal but wants another opportunity to go to the board and would otherwise be entitled to an opportunity to go back to the board, he has to give up his right to appeal or give up the right to go to the board.

The Attorney General's amendments, unfortunately, deal with it in an unduly complex way. The person has to apply to have his certificate extended. If the certificate is supposed to run out in two weeks, he has to get it extended. It would be much simpler to say that whether or not the person has filed for an appeal in court, his certificates continue to expire just as they would if he had not filed for an appeal. If that gives the person an opportunity to go to the board, so be it. The appeal is still sitting before the district court; if he continues to lose at the review board, then one day when the court's busy schedule allows it to hear the appeal, the person can be heard. Meanwhile, the person's right to a periodic review of his detention at the regional review board is preserved. That is the essence of the NDP amendments. I suggest it is a very sane and just way of dealing with this situation.

The other issue on status pending appeal is what happens to the person in an appeal concerning his detention if the patient goes to the review board, and one party is the patient and the other is the physician, the review board finds for the doctor and says, "Yes, this person does meet the committal criterion and should remain in the hospital," and the patient appeals that decision.

Under the NDP amendments, the patient remains in hospital with certificates expiring at the usual intervals so he has to be interviewed by the doctor and assessed periodically. What happens if the review board says to the patient, "Yes, we find for you; you are not dangerous and you do not have to remain in hospital," and the physician appeals?

Under the current Mental Health Act, the patient stays in, even though the review board, which has its own psychiatrist, lawyer and layperson, has considered the evidence of both parties, the physician and the patient, and has looked at the casebook. Even though the board has decided to overturn the

doctor's decision and say, "This patient is not dangerous," which it does on average perhaps one time in 10, the doctor in effect can sit on the review board and say, "No, the patient is going to stay in while I file for an appeal." That is fundamentally unjust and it is recognized as unjust in the criminal justice system. If an accused is acquitted and the crown wants to appeal, the person remains at large pending the appeal.

5:30 p.m.

The NDP amendments would give the patient the opportunity to leave the hospital. He may or may not decide to do it, but his status will be changed to informal. He will have an opportunity to leave. Then at some date in the future, the district court hears the appeal. It may decide the review board was right in finding for the patient, and the status quo is preserved. It may decide the physician was right at first instance and that the patient was dangerous six weeks or two months ago when the review board heard the case. It may find for the doctor and reverse the board's decision, but two months have gone by. The patient may well have recovered in the interim. It would not be fair to yank the person back in arbitrarily to serve the balance of his certificate.

The amendments deal with it by saying, "If the district court feels that the physician was right, that the patient was dangerous and met the committal criteria two months ago, and it feels the person may still be dangerous"--and that is a matter of the court's discretion--"it can order the person brought back into the facility for an assessment." It is left with the court. I suggest that is a sufficient safeguard in that situation.

I want to talk briefly about transfers. We have 10 provincial psychiatric hospitals in the system and countless psychiatric wards of general hospitals. As I said earlier--

Mr. O'Connor: On a point of order, Mr. Chairman: I do not mean to interrupt and I do apologize. However, perhaps we could just point out that traditionally groups before us are allocated an hour and individuals half an hour. Your presentation has lasted over an hour and a half now and we have yet to start the questioning. In view of that, I am wondering whether we should set some time limits or whether we should speak briefly of the groups that are to follow, because obviously they will not be able to speak today. Provided everyone is in agreement that they can be heard tomorrow, I am quite content to allow this group to go on as long as it wishes, but I do want to make sure the groups that follow have their opportunity.

Mr. Chairman: Can you perhaps be of some assistance in indicating how much longer it will be before you arrive at the conclusion of your address? We will go into questions after that. I do not think there is anything inappropriate about indicating the commitment of this committee to groups that are to follow. They will be given a full and thorough opportunity to be heard. It is not our intention to cut off anyone because we are going over with a particular group.

Mr. Giuffrida: I understand the time constraints of the committee and I can arrange to conclude my remarks in 10 minutes. The issue of access to clinical files is one I wanted to discuss, and, briefly, transfers.

Mr. Chairman: Could I get the committee's feeling on this so that we can give some direction to others who are to follow? Let us not get into a long procedural debate, if possible, so that we can get moving. Mr. O'Connor, I will turn to you first.

Mr. O'Connor: On that point, the group has presented us with a very thorough, well written and well documented brief of 31 pages, in addition to which I think Mr. Partington and I, and perhaps others, have met with Ms. McKague in our offices, have reviewed all of these issues with her on a one-to-one basis and have asked her questions. I am quite familiar with their point of view on the various issues and if they did shorten things up as much as possible, I would appreciate that.

Mr. Chairman: Could we try to do that and be as concise as possible? I am sorry. I am trying to speed it up and I am not doing very well myself.

Ms. Fish: I wonder if, in the circumstances, and looking at the clock, we are effectively saying to the other two deputants that they will be heard tomorrow, and could we ascertain their availability? If that is the case, could we confirm that to them now and let them take their leave, if they wish? It is 5:30 p.m. and the committee rises at 6:30 p.m. I think it is fair to say we will not hear anyone else today.

Mr. Chairman: It seems reasonable that the questions will probably absorb most of the balance of the time. If not, we may wish to adjourn, if we finish, a couple of minutes early, recognizing that five or 10 minutes is sort of meaningless to get into the introduction of another group.

I do not know all the spokespeople who are to come forward following this presentation, but we have the director of legislative services for the Ontario Hospital Association. Will you be able to come tomorrow?

Ms. Shushelsky: Yes.

Mr. Chairman: Is there anyone else? Justice for Children?

Mr. Weagan: Mr. Chairman, it depends on the time tomorrow. I can say what I have to say in five to 10 minutes.

Mr. Chairman: You are the kind of delegation we really look forward to hearing from. I say that in jest.

The order is not of too much significance, unless the committee did something I am not aware of while I was speaking in the House. If you could remain--it seems impossible to give you any kind of reasonable opportunity for your submission with the Ontario Hospital Association--we may be able to get you on tonight, I do not know. Tomorrow, we will be starting between 3:30 and 4 p.m., as soon as the routine business of the House is completed. We will be here post-haste, and will get right at it.

Sorry for the interruption, David. We will get back to you.

Ms. McKague: I might add that I am sorry we were not given an indication that there was an expectation this would be confined within an hour. This was not indicated to either of us. I certainly could have shortened my remarks had I known that. We were going on the basis of the time taken by the Ontario Medical Association last week.

Mr. Chairman: One final comment to clarify that point: All the people making submissions during the process of the regular hearings were advised of that. You are absolutely correct. Other groups were not told that unless the clerk told them. I am not aware that she did.

Ms. Fish: No, but there was discussion about the groups to be heard today. When I was in the chair, I made every effort to indicate to all here which three groups would be on this afternoon's list.

Mr. Chairman: As usual, the chairman will accept all the fault and all the blame. We will now proceed. Carry on, David.

Mr. Giuffrida: You have broad shoulders.

Mr. Chairman: Yes, I certainly do.

Mr. Giuffrida: In our psychiatric system, there are more and less restrictive environments available, depending on the needs of the patient. There are psychiatric wards of general hospitals which do not have the facilities available to hold someone in a secure treatment setting. Then there are the provincial psychiatric hospitals, some of which have medium security or forensic units. Finally, there is the Oak Ridge division of the Penetanguishene Mental Health Centre, a maximum security facility for housing seriously mentally disordered males, many of whom have been in conflict with the law but who require a maximum security environment.

The question of transferring someone from one facility to another is not a trivial one. The recommendations of the Ontario Medical Association say: "The proposed section would create more paperwork and delay transfers which would in turn delay therapy. It would also increase the hospital stays."

There are serious problems with what may be arbitrary transfers from a less restrictive to a more restrictive setting. These difficulties have been the subject of recent Supreme Court of Canada cases on three occasions when the setting was not a psychiatric one but a correctional one. The cases were *Morin vs. National Special Handling Unit Review Committee*, *Regina vs. Miller* and *Cardinal vs. Director of Kent Institution*.

The Miller case confirmed and extended its recognition that prisoners have rights or residual liberty which must not be restricted unlawfully. Mr. Justice Gerald Le Dain held that all forms of punitive and administrative segregation reduced the residual liberty of members of the prison's general population by placing the prisoner in a prison within a prison.

In effect, that is what we are talking about. Someone may be an involuntary patient. They may have no quarrel with that or it may have been confirmed by the review board. What is at risk is that they are being placed in a prison within a prison in a highly restrictive setting, with limited or no access to the outdoors, for example.

Under the Child and Family Services Act, 1984, children have an opportunity to appeal their placement to an administrative tribunal. Right now, it is totally at the discretion of the physician. After the fact, as a matter of administrative procedure, the physician is obliged to write a letter to the Minister of Health justifying the transfer, but it may be up to six weeks after the transfer has happened.

While I recognize that doctors will attempt to be conscientious in deciding who should be transferred, that is not always the result. Dr. Hucker recently conducted a thorough investigation of the Oak Ridge division of the Penetanguishene Mental Health Centre, and says on page 37, "Patients are admitted because the referring hospital is calling on Oak Ridge to solve a problem beyond its power and because, all other considerations aside, being

sent to Oak Ridge may be viewed by sectors of the system as constituting a punishment for badly behaved patients."

We see that patients are sometimes transferred for the wrong reasons. The purpose of the New Democratic Party amendments would be to provide an independent review to ensure that people are only transferred for the right reasons.

5:40 p.m.

We talk about access to clinical files. This is a matter dealt with in the amendments of both the Attorney General (Mr. Scott) and the NDP. If the committee welcomes the language of the Attorney General's amendments more than that in those of the NDP, it could be quite a reasonable starting point. But there are a couple of provisions in the Attorney General's amendments that cause great difficulty.

The most serious one is the last, which says that the access to clinical files that psychiatric patients would enjoy under the provision does not apply to past files but only to ones compiled after September 1, 1986. The inclusion of access to clinical files under the Mental Health Act via Bill 7 is an alternative to its inclusion under Bill 34, the Freedom of Information and Protection of Privacy Act. The Attorney General has proposed amendments to that act which deny psychiatric patients access to their files because they are going to get it in this one. It goes without saying that they should have at least the same degree of access under the Mental Health Act as they would enjoy in that act.

Section 63 of the Freedom of Information and Protection of Privacy Act says, "This act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this act comes into force." Someone in a Ministry of Community and Social Services facility can apply under the freedom of information legislation and get access to his file as far back as it goes for years and years. Under the Attorney General's wording of the access to files section in Bill 7, psychiatric patients would not get access to past files. I do not think that discrimination on the basis of disability will be found tolerable by the committee.

There seems to be a broadening consensus that access to files by patients is a good thing. The only other concern I have about the Attorney General's approach to access to clinical files is the exclusion criteria that he has provided for, which include not only dangerous, serious bodily harm to a third party if the patient should have access to the files, but emotional harm to a third party. All of the studies suggest that access to clinical files does not endanger the patient or third parties. It is not a problem where it has been tried.

Under the Attorney General's amendments, a risk of serious harm to the treatment and recovery of the patient while under the treatment of the psychiatric facility, or serious physical harm or emotional harm to another person, would be grounds for denying that person access to his or her own file. Again referring to the submission of the Ontario branch of CMHA, it says that serious physical harm to a third person should be the only grounds for denying someone access to his or her own file. We echo that submission.

Those are my submissions. Thank you.

Mr. Chairman: Some members of the committee have indicated a wish to raise questions.

Mr. Callahan: I gather that you are content with 120 hours, as long as the person has access to legal counsel, and perhaps review, during that time?

Ms. McKague: That would be an alternative method of dealing with it. we will be content with anything this committee does which provides that, on admission to hospital, all the rights immediately arise that at present do not arise until five days later. That would mean provision of rights advice under the new program that has been going on since January, and the right to immediately apply to the review board to have the detention reviewed.

Mr. Callahan: As a practical matter, how quickly is a person able to get before the review board and have a case heard?

Ms. McKague: The amendments currently before you from the Attorney General require a hearing within seven days of receipt of the application. I believe that is practicable. I understand some shift of review board structure is now going on, partially with the object of having boards able to respond a little more quickly. But now, particularly in the provincial facilities, probably everyone is heard within 14 days, for the most part. The act, as currently structured, requires 30 days. But it is being done much faster.

Mr. Callahan: Habeas corpus would probably take you three times that, or longer.

Ms. McKague: That is right.

Mr. Callahan: As a practical matter, what effect is achieved by the person having the right to counsel and the right to apply to the review board if the 120 hours will have gone by the board anyway?

Ms. McKague: The right to go to the board will continue over into the commitment period. Many people are released while on a form 1; many are not. They are continued as committed. We are suggesting that it would be--

Mr. Callahan: You are starting it sooner.

Ms. McKague: Yes. That is all.

Mr. Callahan: The concern I have is that the NDP amendment is to make it six hours. We have heard from a number of witnesses, the last one being a doctor, that six hours does not give them enough time. We have severe concerns about when the patient is a serious threat.

Let us take the situation of a husband being taken out of a household where he was trying to stab his wife. If the NDP amendment carries and he is not able to be assessed within that six hours, it means they have to release him. I can clearly understand that the wife would be absolutely traumatized that he would be released. He would probably be held through the courts on some form of bail in any event, but if he was not, we would have the police taking the next step, which would be to detain him again and get another six hours.

Ms. McKague: I am not sure which of two questions you are asking. Are you asking what would happen if you cannot find a psychiatrist within the

six hours or if the psychiatrist cannot fully assess him within the six hours?

Mr. Callahan: I do not know what quantity of psychiatrists you have in the institutions, but in the good city of Brampton or the region of Peel, it is pretty difficult to see a psychiatrist. I have a concern that the six hours might go by and the person would have to be released.

Mr. Giuffrida: The current Mental Health Act does not require a psychiatrist but only a physician, and general physicians are more readily available on weekends. I assume there is invariably a duty physician available in any hospital. I do not think many people are going to be let out because six hours have elapsed and the doctor has not come by yet. Hospitals may have to adjust their schedules to make sure there are physicians at the admitting department to do the processing.

Mr. Callahan: They clearly would be released under Ms. Gigantes's amendment. She is saying six hours as opposed to 120. They would have to be released.

Ms. McKague: The 120 hours is not there because it is going to take that time to find a physician. The 120 hours is there for a number of reasons, one of which is that it takes us that long to figure out what is going on with this person. However, there is a decision made before that one even now, and that is, do we need to keep this person in here? That decision is made in a very short time. If we need to keep him, then we have five days to figure out what is going on with him.

If the policeman takes someone to the hospital, the hospital has to decide whether to admit him involuntarily. They do not keep the policeman sitting around for five days while they make that call. The initial call is that we will put him on a form 1 and then assess at our leisure. I think the intent of the amendment is that instead of putting him on a form 1, we will put him on a form 3. If we were wrong, it is better for us to release him a couple of days down the line because we made a mistake than to keep him in for five days without any legal protection.

Mr. O'Connor: How do you meet the argument put by Dr. Hoffman that reducing the time will increase the time most people will be kept in custody or in detention in this scenario? Given the six hours, most careful psychiatrists, rather than err and let the man go, as Mr. Callahan is suggesting, will invariably err on the other side and keep him in. In your further suggestion that they go directly to a form 3 and give him a review board hearing within seven days, there is a potential that a number of people who would otherwise have been let go within the first five days will now be staying seven days to get their review hearing, because the psychiatrist cannot determine in that short time, six hours. So he will say, "Let us keep him in and be safe." Is that not more dangerous than the potential portrayed by Mr. Callahan? As I understood it, that was the thrust of Dr. Hoffman's argument.

5:50 p.m.

Ms. McKague: Unlikely as it seems, I have more faith in psychiatrists than either you or Dr. Hoffman. If a conscientious psychiatrist, who has signed a form 3 instead of a form 1 and is therefore entitled to keep the person for two weeks instead of five days, says on day three, "This person does not need to be here," he will still let him go. I do not think he will be held a day longer.

Mr. O'Connor: After he has done a form 3?

Ms. McKague: Sure. He has made up this form 3 immediately. A psychiatrist does not sign a piece of paper and then forget about the person until he is released.

Mr. O'Connor: I understand.

Ms. McKague: His monitoring is ongoing, and if three days down the line it appears the person should be discharged, the psychiatrist is going to discharge him whether he is on a form 1 or on a form 3. He is not going to hold the person those extra days.

However, if it would make people happier to still call it a form 1 but provide protections or make the first form 3 five days instead of two weeks, that is fine. The important thing is process.

Mr. Callahan: Just to be clear on that, when does the six hours or the 120 hours run from, in the case of a police officer picking up a person? Does it run from the moment he picks the person up or does it run from the moment he gets before the justice of the peace and he issues a form 1?

Ms. McKague: Normally, the police officer does not take the person to the justice of the peace. The police officer takes him to a hospital and the doctor issues the form 1. The justice of the peace is another route. You or I can get each other locked up by going off to the JP.

Mr. Callahan: That is what I am asking. In that case, does the six hours run from the time the justice of the peace--

Ms. McKague: No. My understanding is that it runs from when you arrive at the facility. Would that be correct, David?

Mr. Giuffrida: Yes. It is from the time you get there.

Ms. McKague: The order of the justice of the peace is good for seven days, to pick the person up and take him in, so that is not when the 120 hours start to run.

Mr. Callahan: Just to give an example, I have had clients--and I am sure Mr. O'Connor has--who have been referred from the courts under the Mental Health Act to the Penetanguishene Mental Health Centre. All that Penetanguishene has done is to make out a very quick report and sent them back saying they were fit to instruct counsel or stand trial.

Ms. McKague: That would not be under the Mental Health Act. There is a provision in the Mental Health Act that is seldom used. It would be under the Criminal Code.

Mr. Callahan: There is also provision under the Mental Health Act.

Ms. McKague: There is, but the one in the Mental Health Act is seldom used. There are alternative provisions.

Mr. Callahan: Normally, they use the Mental Health Act because under the Criminal Code you must have a psychiatric assessment first. The judges do great dances around that one. Everybody is afraid to commit the person under the Criminal Code without the psychiatrist having seen the person because they

may misinterpret what is going on in the prisoner's dock. They send him back to jail and they wait for a psychiatrist to see him, if it is under the code. That may take four or five days, and he is being detained under those circumstances.

Ms. McKague: That is a brief assessment provision.

Mr. Callahan: Because of the way they deal with him at Penetanguishene under those circumstances, they are doing what was suggested by the good doctor the other day. It is because of the pressures of the institution as well as the limitation on their time that they give him a very cursory examination and send him right back to the court.

Ms. McKague: I will make two responses to that. One I have already made, which is that they are being asked to make a very limited finding. They are not being asked to determine whether the person is mentally disordered or just to put a diagnostic label on him. They are being asked whether this person has the ability to understand what is going on in the courtroom and to instruct his lawyer.

The other is that I would hate to think the quality of assessments in our psychiatric institutions should be measured by the standard of what happens at Oak Ridge division. I do not mean that as a personal attack on Oak Ridge staff; I mean it as an attack on the fact that according to the Hucker report, the institution ought to have 14 psychiatrists and it has one.

Mr. D. R. Cooke: The psychiatrists we heard from last Thursday seemed to suggest that they accept the fact that they are going to be dealing with open files in the future and, therefore, a lot of things will not be written down any more. There will be a greater amount of verbal communication between doctors that will not be put into files. I wonder whether the lack of retroactivity in the legislation of the Attorney General might speak to the fact that doctors wrote things in files in the past with the expectation that they would not be read by either patients or relatives. When you suggest it should be retroactive, does that concern you?

Mr. Guiffrida: First, let me say there is access of a sort now in special circumstances. Under the Mental Health Act, since March 1984, if a patient is going before the review board, he or she has a right to have access to his or her file while preparing for the case. It was felt that because the liberty of the individual was at stake, it is important to give the person access to the same information as the doctor has before going to the tribunal.

Ironically, the result has been that people who are certifiable, at risk of causing dangerous, serious bodily harm to themselves or others, the most ill patients in Ontario, can and routinely have seen their files for the last two years. That has been the rule. People are frequently certified based on information provided by third parties, which is another objection raised by some physicians, that third-party information would be revealed. Yes, it will be revealed. It may often have been the reason the patient was certified in the first place. As Ms. McKague has pointed out with several anecdotes, that information may be wrong. It is important the patient see it.

If there was a serious impact on the way records are kept, I think we would have felt it in the provincial psychiatric hospital system in the last three years, and I have not heard any indication of a serious negative effect. You can have a positive effect as well, where purely speculative or pejorative descriptions are not written down. Perhaps they should not be. One would think

that if it has had an impact on the keeping of records in other jurisdictions where there has been very broad access to files, the staff would object, but in hospitals permitting access, the majority of hospital clinical staff has come to accept and support access.

In study after study, perhaps a small majority of staff who may initially have been reluctant about the plan have endorsed it and said it has improved the relationship with their patients and they have not noted a problem with the quality of record keeping.

Ms. McKague: I am not aware of any study on access to psychiatric records which has indicated anything other than a positive experience all round. People are very relieved at what is in their files. They develop much greater trust in their physicians because they do not have the idea their doctors are hiding something from them. They generally agree that what is in their files is pretty accurate. They appreciate the opportunity to clean up and explain things that are inaccurate. At St. Elizabeth's Hospital in Washington, in the first three years that it was allowing virtually unlimited access to the files, it had no negative incidents. It had one stated limitation. It said it would not give a file to anyone who was actively or imminently violent, but it never applied that limitation; it never had to.

Mr. Chairman: Thank you very much. We appreciate the presentations both of you have made. They will be taken into consideration along with the other thoughts we have heard on this very complicated aspect of the bill.

Next we have Brian Weagant.

CANADIAN FOUNDATION FOR CHILDREN AND THE LAW

Mr. Weagant: Good afternoon. Does everybody have a copy of the submission?

Mr. Chairman: Yes. Maybe I can be helpful. It is numbered 145 for purposes of reference by the committee, and it is Justice for Children. Whenever you are ready, you can begin your presentation.

Mr. Weagant: Thank you. I was in front of you on February 7, I believe. As I told you at that point, Justice for Children is a legal clinic that is the operating arm of an organization called the Canadian Foundation for Children and the Law, which has a province-wide membership. The legal clinic is run by a community board, and the people who work on the staff are responsible to the board.

We come from and speak with no specific institutional bias. Our board is made up of social workers, lawyers, group home workers and so on. The complete staff and service we provide is for children.

6 p.m.

I want to make one point today. It is a point I did not cover when I was in front of you in February because the issue had not really come up then. It has to do with children being admitted to locked facilities by their parents. These are competent children who cannot be certified but can be held in a locked facility because they have been admitted by their parents and, in the case of mental health facilities, they are under the age of 18.

I was hoping that the new Child and Family Services Act would speak to

the case of most of the kids who were receiving psychiatric services in Ontario. However, it now seems there is an argument going on between two ministries about which facilities will be operating under which act. It looks as if the situation may be that some of the facilities the Child and Family Services Act had in mind will stay under the Mental Health Act, and we will now have a dual system operating in Ontario. If children are in a facility run by the Ministry of Community and Social Services, they have an absolute right to refuse placement at 16, unless they are incompetent and can be committed under the provisions of that act.

A child over the age of 12 who is admitted by his parents can have the decision on the placement reviewed by the residential placement advisory committee. That committee can make a recommendation and if the child disagrees with it, he can appeal it to the Children's Services Review Board which has the power to upset the placement.

A child admitted to a mental health facility at this point, that is anyone under the age of 18 whether he is competent or not, can be held there on the authority of his parent's or guardian's consent. This raises two issues for this committee under section 15. The first is that in a mental health facility, somebody who is 18 has an absolute right to refuse to stay in the hospital unless he is being certified under the provisions of the act. If someone is 17 and three quarters, he can be admitted by his parents and he cannot even go to a regional review board because he has not been certified.

Meanwhile, down the street at the Ministry of Community and Social Services institution, everybody over 16 years of age has the right to turn down the placement unless they are being certified under that act--I should not say certified, it is more of a civil commitment process under that act--and anybody over 12 has a right to appeal the placement.

There will be two types of discrimination here. One will be discrimination on the basis of which ministry is paying for the building the person is in, and the other is clearly discrimination on the basis of age. The recommendation I put in front of you is that the determination of whether somebody can consent or refuse to stay in a placement should not hinge on one's age in years at all, it should hinge on competency. The recommendation I would ask you to consider is that people are automatically considered competent at the age of 16, and under 16 their competency has to be assessed for the purposes of deciding whether they can consent to or refuse placement or treatment.

I have drafted for your consideration an amendment that may cover this. Mr. Chairman, I heard that you prefer the amendments in writing. On page 2 of the submission in front of you, the recommendation says, "That the Mental Health Act be amended to provide that the right to consent to admission or treatment...." It should also be "the right to consent or refuse to admission or treatment." That will make the recommendation clear.

In the recommendation, if that recommendation is accepted by the committee, I am assuming that the regional review board will be able to sit and determine questions of competency and some day will have the force of law. My recommendations hinge on that happening. Needless to say, I believe that anybody who is told he or she is incompetent should have the right to go to the regional review board and have it review the decision to declare them incompetent.

Mr. Chairman: All right. If that has completed your submission, we will go to questions.

Mr. Warner: I have a couple of details. The proposed amendment says "age of majority." Is that to be 16?

Mr. Weagant: Age of majority is currently defined in the Interpretation Act as 18. I have to work with the act the way it reads today. I hope there will be an amendment to the Mental Health Act lowering that age to 16. It is currently 18 because it says "age of majority" in the Mental Health Act. There is a recommendation in front of you that it be changed to 16.

Mr. Warner: What happens to a 17-year-old right now?

Mr. Weagant: Under which act? The Mental Health Act?

Mr. Warner: The parents have a choice, though. If they use the Mental Health Act, they can have a 17-year-old committed to an institution.

Mr. Weagant: Perhaps Mr. Sharpe can help me out on this one, but since it is age of majority to consent or refuse services under the Mental Health Act, I assume a 17-year-old could be put in by his parents.

Mr. Sharpe: Perhaps I had better clarify the way that applies. The Mental Health Act committal powers are not tied to any age. In other words, a 10-year-old could be committed if he met the committal standard. He would have full rights to go to the review board and full due process protection of the legislation. Age of majority is relevant only with respect to decisions to accept or refuse treatment for involuntary patients and with respect to the matter of disclosure of information. It is recommended in the government's motions that this be changed to age 16, but the committal process has no age parameters associated with it at all. In fact, the informal or voluntary admission process is also not tied to age by legislation.

Mr. Weagant: I do not want to argue, but by becoming an informal patient at your parents' admission you are effectively committed, and that is the point I am trying to make here. You can put a child in an institution against his will and the only authority you need is the parent or guardian's signature on the admission certificate. It is not a simple commitment.

Mr. Sharpe: The legislation does not specifically provide for a parent's ability to do what you just described. It may be administrative practice that in some hospitals a 14-year-old or a 15-year-old is accepted against his will as a so-called voluntary or informal patient, but I do not believe the law is at all clear that this is an appropriate authority. The Mental Health Act does not regulate that admission process.

Mr. Weagant: That is true. I believe the Public Hospitals Act sets 16 as an age at which the hospital can take a refusal or a consent. You are saying it would vary from institution to institution to the point where there is--

Mr. Sharpe: I believe that is correct. That is not to say it should not be regulated but it is not currently regulated.

Mr. Warner: The hospital can commit a 15-year-old on the word of the parents, but not a 16-year-old?

Mr. Sharpe: I do not think the law is clear that a hospital can accept a 15-year-old who is unwilling to come in and who is not certifiable or committable just because the parent wants to sign him in. I do not believe it

is clear a parent can confine a 15-year-old, let alone transfer that authority to a hospital. Some research done some years ago indicated that perhaps there is some limited authority for up to 12 hours or even 24 hours for a younger child, but I do not believe there is an extended authority for a parent to provide that power to a hospital.

Ms. Gigantes: My question follows on this discussion. If a child is a so-called voluntary patient but is being in effect held in an institution, does that child have access to rights advisers, legal counsel and all that?

Mr. Sharpe: If the child is committed as an involuntary patient, he does. If they are voluntary or informal, they have access to the patient advocates to assist them in the government hospitals, but it is not a legislated right as it is for the involuntary patient.

Ms. Gigantes: There would not be automatic contact?

Mr. Sharpe: No. The only effective means a 15-year-old would have of challenging the hospital's authority would be an extraordinary remedy, such as to bring habeas corpus against the hospital and ask the hospital to justify its exercise of the detention power.

Ms. Gigantes: What do we do about this?

Mr. Weagant: You could accept the amendment I put.

Mr. Sharpe: The problem with this amendment is that it is tied to age of majority and the Mental Health Act admission process does not say anything about age. One could change the language to "an informal patient who has been taken into hospital on the basis of parental or guardian authority."

Mr. Warner: And do not worry about the age.

Mr. Sharpe: Yes, do not worry about the age. It might be an older person who has a developmental handicap and is signed in by a relative, or quite an elderly person who has developed senility or something of that sort. The same principle would apply to any of those, although they are technically voluntary.

One might then say that any who in their view were held against their will would have the same access to the rights advisers and perhaps to the review board. There you are looking at the same issues you would look at in the bona fide actions of a children's aid society, the parents' patria authority. Is it for the good of the person? What if they do not want to follow instructions? To legislate for that means opening up a whole other issue in the Mental Health Act, to get into fundamental legislation on the rights of parents and guardians and societies to make decisions on placements. It is the same thing the Ministry of Community and Social Services has debated for so many years.

Ms. Gigantes: If our law provides that a 16-year-old who is committed has rights, how is it that we will not provide rights for the 16-year-old who is not committed? That seems totally unreasonable.

Mr. Weagant: Mr. Sharpe, the Ministry of Community and Social Services has finally taken a stand on this. Its stand is reflected in the Child and Family Services Act. It has given carte blanche to anyone over 16 to refuse treatment or to refuse placement and it has given people under that

age, whether competent or not, the right to review the placement. It is saying the direction in which it thinks the law should go.

Mr. Sharpe: Are you speaking of the secure service part of the Child and Family Services Act?

Mr. Weagant: Yes. That is part of it. The right to review placements is in section 35 of the act. It refers to any placement in any Ministry of Community and Social Services facility.

Mr. Sharpe: There are some matters still under discussion in that legislation. I agree with you. I think that is the proper place to discuss the principles in child and family services, and there should be consistency in government legislation.

Mr. Weagant: If there is not a mirror amendment made to the Mental Health Act, we will have the ridiculous situation of someone being treated differently with different rights, depending on who is funding the building he is in. If there was ever an equality issue--

Mr. Warner: Does the suggestion of not mentioning an age but rather setting out the protections that an individual has, the right to counsel, the right to review and so on, answer your concerns?

Mr. Weagant: Yes, it would. In an ideal world, you would not override any competent person's refusal to take a placement or treatment. If you could draft that, you would get a lot of support from our organization.

Ms. Gigantes: We are looking for help, Mr. Chairman. I wonder whether we can ask Mr. Sharpe to cast his mind on our problem and perhaps give us some suggestions before we finish this bill.

Mr. Ward: You are correct. I will take this back to the minister and take a look at it, particularly in the context of any legislation that applies to the Ministry of Community and Social Services.

Ms. Gigantes: Mr. Chairman, can we treat this as a matter we will return to on further advice?

Mr. Ward: I will get something back.

Mr. Chairman: Thank you very much, sir.

If there is no further business to bring before the committee, I suggest we adjourn. I realize there are about 15 minutes left, which is not enough time to get at the Ontario Hospital Association submission this afternoon. I will look to a committee member for direction on that.

The committee adjourned at 6:14 p.m.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
TUESDAY, MAY 27, 1986

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

Ewart, J. D., Director, Policy Development Division

From the Ministry of Health:

Ward, C. C., Parliamentary Assistant to the Minister of Health (Wentworth North L)

From the Ontario Hospital Association:

Rudy, W. A., Vice-President

Shushelski, C. F., Director, Legislation Services

Short, H. H., Director, Public Affairs

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, May 27, 1986

The committee met at 3:58 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

The Vice-Chairman: Ladies and gentlemen, at the meeting this afternoon we have before us Ms. Carolyn Shushelski from the Ontario Hospital Association and Ms. Hilary Short. Do you have someone else with you?

Ms. Shushelski: Yes, Willis Rudy. He is vice-president of the Ontario Hospital Association and he is going to make a few remarks.

The Vice-Chairman: Please sit down. The committee will begin with the presentation of the Ontario Hospital Association.

ONTARIO HOSPITAL ASSOCIATION

Mr. Rudy: We appreciate the opportunity to come here at rather short notice and make some comments on this piece of legislation.

Briefly, I would like to tell you what the OHA is. Then Ms. Shushelski will make a detailed presentation and then there will be time for questions afterwards. We will speak for perhaps half an hour, give or take a bit, and then have questions after that.

The OHA includes in its membership about 350 hospitals and allied institutions, including all public hospitals in the province. Among the public hospitals are some 69 hospitals with psychiatric units operating under the Mental Health Act. The government-owned psychiatric facilities are also OHA members. OHA is an independent nonprofit voluntary organization that provides representation of direct services to help hospitals provide the best possible quality of patient care within the limits of funding and the regulations and legislation. It is governed by a board of directors and made up of hospital trustees and chief executive officers from the association's 12 provincial regions.

To provide you with some perspective on the role of the public general hospitals in psychiatric care, of the 69 units in the province, this represents about 2,400 beds, and there are approximately 35,000 patients admitted to these beds in the course of a year. By comparison, the psychiatric institutions--I am not sure of the exact number; it is around 4,500 beds--admit about 11,000 patients. The difference in the number of patients is due to the length of the stay. The general hospitals treat patients who typically are acute short-term patients, whereas the psychiatric institutions generally have patients who require a longer length of stay.

At this time I would like to have Ms. Shushelski go through the legislation and provide comments in detail on a clause-by-clause basis.

Ms. Shushelski: I am going to comment with respect to the proposed amendments, but I am going to try to keep it a little informal. I would just like to say, before I do make the comments, that as well as being a lawyer, I am a nurse and I have had the opportunity to work for a downtown Toronto emergency department for five years. I feel fortunate to be able to make submissions now, because I have a perspective that might bring a little more information to everyone.

First, I would like speak about restraints. Perhaps the first thing I should do, before I get into that, is to explain about the public hospitals and how they actually function when it comes to psychiatric patients. Public hospitals may have psychiatric facilities and generally patients may come in and need psychiatric assistance. They arrive in the emergency department, usually. They may be in a crisis or they may be in a situation where they need help but it is not critical. At that point, a physician generally examines them, and if he or she feels it is necessary, he or she will ask for a psychiatric assessment.

If that public hospital has a psychiatric facility, it is usually quite helpful, because the hospital may be able to summon a psychiatrist to do an assessment within a short period of time. However, we have to understand that there are hospitals up north, in Toronto, all over the province that may not have psychiatric facilities. If that is true, the initial assessment by a physician will be done in a public hospital setting. However, the patient may have to be transferred elsewhere and this takes time; the assessment cannot be done immediately. We have to think of that when we are talking about time elements, form 1 and how long it takes for a patient to be seen by a psychiatrist.

Going on to the issue of restraints, one of the amendments suggested is that there no longer be within the definition of "restraint" the use of a chemical restraint. I want to make a few comments about that.

The chemical restraint is often used in conjunction with a mechanical restraint. What we want to do primarily is to look after the patient, care for that patient and protect him or her. At the same time, we have to be aware that there are other individuals within the health care setting, the public, everyone.

We talk about rights and, of course, each individual does have the right to be free, not to be detained, not to be restrained in a form of detention. However, we must be aware of section 1 of the charter, which guarantees rights and freedoms as set out in the Canadian Charter of Rights and Freedoms, "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Thus, when we talk about restraining or detaining, we have to be careful that a person not be detained or restrained without justification. You must be able to justify it. It must be to prevent harm to him or her or to other persons. However, we have to remember that he may have family members who fear for their safety. There may be the public, there may be other patients in the hospital and there may be the patient himself or herself whom we must protect from harm to himself or herself.

In using chemical restraints we have come a long way. Yesterday, Ms.

McKague mentioned that in the 1960s there were some rather horrifying ways in which persons were restrained or managed. Now what a physician would want to do, I imagine, is--I am not a physician so I do not know. I will comment that I have been in situations where I have had to restrain patients. I know sometimes it is not a method that is pleasant for the patient. You want to be careful because restraints are forms of tying people down and very often patients can be managed much more effectively with a chemical restraint.

I want to make one more comment about restraints. I believe another suggestion is that we should eliminate the word "control" in the definition of "restraint" and substitute for it something that says you should restrain persons only to prevent serious bodily harm to others. Certainly you do want to prevent serious bodily harm to that person and to others.

There may be times when emotional harm may be done to others as well. The patient may be aggressive, abusive, violently acting out to someone and in fact may be harming himself or herself emotionally. He may be in a state of extreme agitation; he may be in manic state. Sometimes the worst thing you can do for a person when he is in a state like that is to restrain him physically or by force without the benefit of a chemical. I am talking about a drug that can at least calm the patient down to an extent where you can get a proper assessment done of that patient and get something valuable going and give the patient the chance to recuperate, because he or she is exhausted.

4:10 p.m.

Do not forget that this patient has come from his home environment and been put into the hospital setting. He has already experienced emotional upset and is there in the hospital for help. I have had patients thank the hospital. "I know I fought you. I know I did not want that and I said I did not want it, but I assure you now that I thank you for what you did." They have thanked us.

Before we eliminate the chemical restraint aspect, we must examine it more closely. Further, we do not want to hamstring the hospitals or doctors in providing the care that the psychiatric patients need. Any limitations must be reasonable and they must meet the needs of the patients and the public. If we talk about rights in the charter, we all agree we are trying to strike a balance. The patient deserves to be free, but it has to be within the limits of protecting him or her, and we have to look at society as well.

Yesterday, we had a few examples of what goes on in the hospitals. It may be useful if I give you one example of a case that was recounted to me. It was about a young lady who was delirious, confused and agitated. She had no one but her sister. Her sister was at the house, saw the patient was in a bad state and said to her sister: "I want to take you to the hospital. You need help and you need it now." Because she was confused and did not understand that she needed help, the lady said, "No, I will not go; I refuse," and got into an argument with her sister.

Her sister was going to call an ambulance but could not do that because she had been through that before. The ambulance attendants cannot come and take someone forcibly into the ambulance unless the patient wants to go. The sister ended up by leaving the apartment and leaving her sister. The sister felt very guilty about it but did not know what else to do. The young lady ended up on the street barefoot, with hardly any clothes on and was soon picked up by the police. The police took her to the hospital and she was seen.

Yesterday, there was a comment that the justice of the peace and the

sections of the act that deal with the police taking a patient to the hospital, or a justice of the peace being able to have a patient go to the hospital to be assessed by a psychiatrist, go too far. We have to understand that sometimes people need the assistance and the family members do not know what else to do. The sister could have gone to the justice of the peace but maybe she did not know she could do that. Not everyone is aware of this. At least the police were there to guide the patient to the right place.

I want to speak about one of the amendments, which proposes that the period to hold a patient for psychiatric assessment be changed from 120 hours to six hours. Some real concerns stem from that. Again, we have to be reasonable. Six hours is a very short time. Up north, a patient may be seen by a physician but then may have to be transferred elsewhere. He needs to be seen by a psychiatrist.

As I said, even in Toronto, you have a situation where there is a hospital with no psychiatric unit, but you still have to get a patient assessed by a psychiatrist. This takes time. Often it is a matter of arranging the transfer, calling an ambulance and settling the patient. There is a lot going on. It does not happen in two minutes. It can take up to several hours.

Further, some patients arrive at the hospital and there is nothing at all known about them. They come without any identification; they just arrive. What we need is a little bit of time to sort out who the person is and find out who the relatives are. Then perhaps with that information, we can determine what the background of the patient is, what the health and prior psychiatric problems are and go from there.

One of the biggest fears I would expect is if you change the 120 hours to a six-hour limit, it would only be natural that no one would want to release a patient whom they fear could cause harm to himself or herself or to others. The natural tendency is to certify that person under a form 3. When you certify someone, there are implications much more serious than on a form 1. It is much more difficult to go from country to country. You cannot be bonded. There are a lot of implications in a form 3.

On a form 1, it is not so onerous and it gives more time for that patient to settle down. In the first few hours, they are usually extremely distraught and need time. If you can give them that time, they will come around and they will say, "Gee, I was distressed and I was very upset, but I am okay now and I am willing to stay in as a involuntary patient." It is for no one's use except the patient's. All the doctor has to do is fill out a form 3 and the patient is certified. What has the doctor or the hospital got to gain in a situation like that? That time is for the patient.

We feel the amendment that would reduce the hours from 120 to six hours should be rejected. That should really be reviewed very carefully before it is brought into effect, because it can have very serious implications. Remember also if within six hours the hospital cannot get everything done in time, the patient is free to go back out on the street. That is not fair to the patient.

There is the issue of transfers. From time to time, hospitals have to transfer patients. It is a cumbersome process and it is disturbing to the patient. We all recognize that. Hospitals and health care workers do not do it unless the patient requires a special type of treatment or the care he is getting in that facility is not what he needs. One does not just make a transfer. It is not on a whim; it is something that takes time and co-ordination and is only done when it is necessary.

What I understand the amendment to be is that now if someone is going to be transferred from one psychiatric facility to another psychiatric facility, it requires a review board hearing. That is going to take time. The time it takes is not going to affect the hospitals, the physicians or the nurses. If the patient needs treatment, the one who is going to be affected, as in most of these cases, is the patient. It is delay for that patient.

4:20 p.m.

Yes, they have a right to know what their status is in a hospital facility and the right to know what is going to happen to them, and they should. However, there is a lot of administrative documentation to go on in a hospital with a transfer for a transfer. This will add to it. That is not great, and it certainly takes away from the patient care aspect and increases the paperwork. Health care workers would rather put the time into the care of the patient, not into the administrative documentation. Nevertheless, if it is necessary, so be it. However, when we do this, we have to think of the patient and what he or she needs.

Perhaps a bigger concern is the transfer within a facility to a more secure setting. There will have to be a review board hearing. It almost boggles the mind when one thinks of the documentation and how this is going to encumber the administration of the hospital. I say this as a nurse. It does not affect the health care workers; it affects the patients. They are the ones who suffer, not the health care workers.

I want to make a few comments about competency in decision-making. Before I do that and before I get off the topics I have discussed about the right to be detained and balancing the interests, I think we all probably have friends or perhaps members of our families who can tell us stories about what went on in the 1940s or 1930s in psychiatric institutions. Probably some of them did stay there for 10 years and nothing happened. Perhaps they died there. However, today we have come a lot further. There are a lot of people we help and perhaps sometimes we have gone as far as we can go before we will be compromising the safety of the patient.

There are two aspect I want to bring up. I want to give two examples. One is the patient who may be a danger to others. Generally, they know when they need help. They arrive at the hospital, sometimes without anyone, and they say they do not want your help, but they are there. They are aggressive. You ask what is wrong and they say: "Get me a doctor. That is all I want." Fine. They may have a weapon on them in full view and they may attack you physically. They do.

The alternative, of course, is to call the police. You do what is necessary. You can get the chart up, and it clearly says right on it, "This patient is homicidal and suicidal." Everything works out. You get the patient to the hospital or to a facility that can look after the patient.

I do not believe any patient is unduly detained. The case I gave you I know very well because I was part of that. The very next day, the patient arrived in the emergency department and said, "Good afternoon, where is my knife?" It was the same patient. I know that if he needed to be detained in a psychiatric facility, he would have been, but he was not.

I do not think our system does not work today. I think it does. I speak about him and about a young lady. Sometimes I wonder if we did not do

everything we could have done or whether we missed or what failed her. She was a suicidal young lady, in and out of the hospital. I suppose the hospital and the doctors did everything they could, but she was only 18. Eventually, one evening we were reading the newspaper and her name was in the obituaries.

I do not think we hold people too long. I do not think we restrain people too much. Furthermore, in support of the health care workers, they are professionals. They have a job to do and they care. One of the most distressing things to hear is a patient saying there are vendettas by health care workers on individuals. I know a comment was made that health care workers did not like her, so they restrained her. They did not like her, so they did this or that. You do not like all patients, they are not all very likeable, but that has nothing to do with the way you care for them at all. You are a professional and you do your job. Nobody restrains or detains people to get even.

Regarding health care, clinical records, psychiatric facilities have clinical records. They are governed by the Mental Health Act. Public hospitals are a bit different. There are psychiatric facilities within the hospital institution and those records are governed by the Public Hospitals Act. The medical treatment part of a hospital is governed by the Public Hospitals Act. They have their own act for their records.

The amendments proposed would cause increased access to clinical records. At present, section 29 of the Mental Health Act sets out very specifically who can see the record and when. It also provides a section that allows the officer in charge, at his own discretion, not to show the record if he feels harm will come to the patient.

Sometimes a clinical record, if shown to a patient, can bring harm to the patient. He may not understand what is being said in that record, he may misinterpret it and it may alarm him. What is proposed is that every patient should be entitled to make changes on the record of anything he disagrees with or if he believes there is an omission.

One of the problems with that is that this is a legal document. This goes into court. It is a record. The patient may not agree with it, but that is what the record is. It was made contemporaneously with the act. When the nurse or the doctor saw the patient, he or she wrote what he or she saw and did. If it was a sick patient, he may have been in a state where he may not have understood. He may have been semiconscious, he may have had medication and he may have not understood what went on at the time. He may not have understood what the facts were. The people who were there are the ones who know what the facts were.

We do not even suggest that health care workers make changes on the chart. Now we are going to allow omissions and changes to be made on the clinical record. Are we talking about the address or are we actually talking about the nurse's notes? Are we talking about the doctor's physical, the doctor's history, the doctor's orders? What are we talking about here? Do we really need that?

4:30 p.m.

Furthermore, you want an accurate document. If you went to the hospital in 1970 and had your appendix out and came back 10 years later, this is what they are going to pull out. They may have discovered you were a diabetic at

the time. There may be a lot of information there they will want to review there. I do not know that patients should be changing the record. We really have to look at that very carefully.

Furthermore, if the patients are going to be reviewing the medical records, you have to wonder if that is going to affect the health care giver's way of reporting. Right now, they look after the patient, they treat the patient and they record what they did and what they saw. They try to do it objectively and, in some cases, specifically to the particular patient. If they feel this record is going to be examined and criticized by a patient, this is going to affect what they record. If it affects what they record and the patient is back in the hospital six months later or six years later, you are not going to have the best document on that patient that you would usually have.

This is selective reporting and that is not what is encouraged in the hospital system. You always want to encourage the best reporting possible. This is the history of the patient, and you want to return to that 10 or 15 years later and have the best documentation possible so you can give the best care possible. That is the purpose of it.

There is another amendment that deals with the individual who may be determined incompetent in the hospital setting. The doctor is the person who decides if the patient is mentally competent to make decisions. That is the way it has always been. The proposal is that any person who may be deemed to be incompetent should have the right to have that reviewed by a review board and that determination should actually be made by the review board, as I understand the proposed amendment.

The office of the Attorney General has an advisory committee on decision-making for the mentally incapable. There are about 26 individuals on that committee--doctors, lawyers, social workers, representatives of senior citizens. It is a very big group. It has been meeting for four hours every Tuesday night since November 1985. All these issues are being examined there. There are persons from the Ontario Medical Association, the Ontario Hospital Association, the Advocacy Resource Centre for the Handicapped and the advocate groups for the mentally retarded. They are all there. Everyone is being heard.

If we are going to make changes as to who should be the persons to decide for others or who should determine who is the person competent to make decisions, why not leave it to the group that is dealing with it right now? If you are introducing it here in this act, not everyone has had an opportunity to be heard here. You are not making the best use of the resource you have.

We strongly recommend that amendment not be passed but be left to the Attorney General's office to make recommendations on this matter. As a matter of fact, I believe draft legislation right now is being put together. I suppose it will be reviewed in the fall.

There is one other aspect that has to do with the limitation period. Under the Mental Health Act it was six months within which you could bring an action against the facility. Within a hospital setting you are governed by more than one act. That in itself poses some difficulties, but when you start having different limitation periods for different areas within the same institution, you really get into some confusion.

If the six-month period is going to be repealed, we strongly recommend from the hospital standpoint that at least some consistency be kept within the

institution itself. Under the Public Hospitals Act it is two years to bring an action against a hospital or the workers within a hospital. If you are going to lengthen it at all, at least make it consistent with the Public Hospitals Act so that we have one system in one institution.

I have one last comment that I really feel I have to make after listening to the comments that were made yesterday. For some reason, the comment was made that rarely is treatment for a psychiatric patient urgent, or that there is no extreme urgency in any psychiatric case. I do not have the exact quote.

I have some very serious concerns about that, because there are many individuals who come into the emergency department who are in a crisis and need immediate treatment, immediate help. I am sure you can think of many yourself without getting into all the details. For the record, I want to make it very clear that there are often cases where the individual does need urgent treatment.

The Vice-Chairman: Thank you very much, Ms. Shushelski. Are there others in your group who want to address the committee at this time?

Mr. Rudy: No. We are open for questions now.

Ms. Gigantes: I will try to be brief. Many areas have been raised that I would like to ask about in more detail than we can afford here. When we run down a number of major areas that have been mentioned in your presentation, may I go back first to the area of restraint?

One of the clear directions of the amendment, which you will recognize and which was spoken to yesterday, was the desirable goal of differentiating between care and restraint. In your presentation you again fell into the grey area at some points, in my view. You said things like, "Do not hamstring doctors in providing the care patients need." I would ask you to focus on the amendments that deal with restraint and think of them as dealing only with restraint. Try to understand that the purpose of the amendment is to make a clear definition.

One can debate the kinds of restraint that should be used. It seems to me that this is a different matter from the other purpose of the amendment proposed, which is to document not only what kind of restraint may be used but also exactly the circumstances and the purpose of the restraint.

The written brief that was submitted suggested that all restraint used now was documented, but when you referred to the clinical requirements--

Ms. Shushelski: Are you talking about the brief the Ontario Hospital Association has put in?

Ms. Gigantes: Yes.

Ms. Shushelski: If you read my notes, I made it quite clear it is chemical restraints that are very well documented.

4:40 p.m.

Ms. Gigantes: Okay. Let us go on, then. The kind of chemical used, the dose and so on, are in the clinical record, and the written submission made by the hospital association indicates that this is all in the clinical

record. All the additional documentation that would be required would be to describe the circumstance in the clinical record and the purpose of the restraint. It would not be a great addition.

Ms. Shushelski: Good documentation would do that anyway.

Ms. Gigantes: All the amendment would ask in terms of the documentation--there is a lot made here of the administrative difficulty of all this load of documentary evidence required by the hospital. What you are telling me, essentially, is that this is done anyhow, so it is not--

Ms. Shushelski: I am telling you that in the record, when one is documenting now one is giving care to a person, it is very clear, certainly when it comes to a medication, that you document all the things you have written out. That is very--

Ms. Gigantes: Here we are talking about documenting for the purpose of distinguishing between restraint and care.

Ms. Shushelski: To distinguish between restraint and care.

Ms. Gigantes: Yes.

Ms. Short: This point was made yesterday, too. It is very difficult if the same drugs are used for restraint and care. It would be a problem sometimes for the physician or the health professional to differentiate between what was restraint and what was care.

Ms. Shushelski: If I may just interrupt for a second, where does restraint stop and care begin? What are we talking about? I think you are saying that we must be overrestraining and we are going beyond the limits of care. Is that what we are getting at here?

Ms. Gigantes: No. We are getting at the importance of distinguishing treatment from restraint. There may, in the course of treatment, be outbursts that will require restraint, and the purpose of that amendment dealing with restraint is to distinguish clearly and to have the documentation of restraint, its purposes, the circumstances under which it arises and so on carefully documented. From what you have said and from what you indicate in your brief, that would not really be an enormous addition to the hospital's normal pattern of clinical record-keeping.

Ms. Shushelski: You are calling it chemical restraint; I guess I would call it a medication. That clearly is documented. I suppose the only place we are left now is the area of physical or mechanical restraint. Is that what you are talking about?

Ms. Gigantes: No, because when medication is used for restraint purposes, it is not used for therapeutic purposes. There is a difference. When the people you have described come in and physically or some other way, perhaps chemically, in your view and in the view of whoever else is there and has to make a decision at the time, have to be restrained, that is a particular kind of situation.

It is different from long-term therapy; it is different from the treatment. What the amendment attempts to address is the need for a patient to know that what is restraint is restraint and what is treatment is treatment, for health care workers to know that and for the documentation to be organized in that fashion.

Ms. Snushelski: I know what you are saying. You are right; it is a grey area.

Ms. Gigantes: I would not suggest it is a grey area. The practice has been grey and it should not be.

Ms. Snushelski: You would want to see documentation that the purpose of this drug was restraint only?

Ms. Gigantes: Yes.

Ms. Short: I think we can understand that. The problem is that it would be difficult to do that always, and certainly physicians would have to--

Ms. Gigantes: We are told about patients who are out of control, physically violent. Let us be clear: If that is what we are discussing, we are talking about a very specific kind of measure that is taken by the health care staff that is determined to be necessary for purposes of restraint.

Ms. Snushelski: May I give you an example? Maybe if we go through this example you can define where the difference is.

A patient comes in in a very agitated state. You cannot get near him, but you have to do so in order to give care because you have to examine him to see what is going on. Where do you draw the line? When you hold the patient down in order to listen to his heart and get some kind of assessment before you go giving him drugs, where do you draw the line? Is it a restraint for care? Is it a restraint for restraint purposes? What is going on there?

Ms. Gigantes: You would have to decide that. I am not the professional.

Ms. Snushelski: Okay. It is very difficult.

Ms. Gigantes: I think not. I have full confidence that people trained in the area of health care, particularly with mentally ill patients, can make that distinction and I would like to see them do it as a matter of course.

Anyhow, let us not have a huge argument about that. I just wanted to raise with you my thought that it was not going to add enormously to the administrative burden of what you already describe as the clinical record-keeping system.

On the assessment time question, you talk about the need of time for the transfer of a patient from a facility that does not have a psychiatric ward or psychiatric services to a facility that does have psychiatric services. You talk about the need to take time to find a psychiatrist for an assessment.

I refer you to section 9 of the act as it now stands. Section 9 refers to a psychiatric assessment. It does not refer to a psychiatrist; it refers to a doctor. It is not the case at Oak Ridge--we know there is one psychiatrist at Oak Ridge--that people who are being assessed for involuntary admission are necessarily being, or should necessarily be or need be, given a psychiatric assessment by a psychiatrist. We do not have to look around the countryside for a psychiatrist, as you know.

You suggest that if an assessment cannot be completed within six hours, then the patient is back on the street and that is not fair to the patient. If no doctor in the facility can make an assessment within six hours of whether the patient should be back on the street, then the patient should be back on the street. If medical people attached to a psychiatric facility--and the time count starts once you get to the psychiatric facility--cannot make a decision in six hours whether somebody should be on the street, then I suggest to you he should be on the street in six hours.

Ms. Shushelski: The time count starts when you arrive at the psychiatric facility.

Ms. Gigantes: That is right.

Ms. Shushelski: Okay. Help me out with this. Let us look at it in terms of the public hospital setting, the public hospital without a psychiatric unit. There is only one doctor there.

Ms. Gigantes: You have to transfer the person to a psychiatric facility under the act, under section 9.

Ms. Shushelski: Then you have to get the doctor in to see the patient.

Ms. Gigantes: No, any doctor can apply.

Ms. Shushelski: Yes, a doctor.

Ms. Gigantes: Any doctor can apply to the psychiatric facility for the assessment on the form 1. Right? That is how it happens.

Ms. Shushelski: Right.

Ms. Gigantes: I do not see this great business of having to search the countryside for a psychiatrist. That is not how it operates in Ontario now, nor would it with the change. We are talking about a decision--

Ms. Shushelski: You speak in a perfect world. Nothing is perfect. Things do occur.

Ms. Gigantes: No. I am describing a very imperfect world. It would be great if we all had psychiatrists at every hospital and if they were there 24 hours a day. However, we are working with Ontario as she really is, and Ontario as she really is works quite differently from your description of this vast search party that has to be sent out for a psychiatrist to do an assessment. I just want to make that point. That is not how section 9 operates in Ontario, nor would it under the amendment.

Ms. Short: We would all agree that 120 hours could be too long, but maybe six hours is too short in an imperfect world.

Ms. Gigantes: We can probably discuss that. The alternative, which was raised by Ms. McKague again yesterday, and Dr. Hoffman discussed it informally with us after his presentation last week, was that perhaps we should back up the review process and eliminate the form 1. I do not know what that would mean, but there is clearly concern about 120 hours.

Ms. Short: We recognize that. It is just that in an imperfect world, as Ms. Shushelski said, six hours can be a bit on the tight side.

Ms. Gigantes: That may be.

Mr. Rudy: I am hearing a lot of controversy this afternoon about some of these issues and I hope no fast decision is made on them, because there are no simple and easy decisions, either.

Ms. Gigantes: I remind you that this is not the first time this committee has dealt with these items. I personally went through the same kind of discussion for a long time back in 1978, and 120 hours was a compromise then. It certainly was not what this party was proposing in 1978.

4:50 p.m.

Ms. Shushelski: I hope we all agree here. If it were I, I would not want to be on a form 3 if I had the option of being on a form 1, thank you very much. Do we not at least all agree with that? Surely we do not want to put people on form 3s unnecessarily. The fear I have is that if you start to reduce the length of time you are giving physicians to make reasoned decisions, they will have no alternative but to choose the safe method. The safe method is bound to be: "I do not know. Put him on a form 3 and be safe." I do not know. I am not a doctor, but I am just bringing it up.

Ms. Gigantes: We can discuss the issues around this, but it is certainly not the case that under section 9 we have to search the world for a psychiatrist. Okay? We can leave that out of our time--

Ms. Shushelski: I am not talking about searching the world for a psychiatrist. That may be pulling one little part of the issue out of what I am saying. Let us look at the whole thing.

Ms. Gigantes: It is an important part of what you are saying.

Ms. Shushelski: Okay. If it is an important part, then maybe we have to look at it in more detail. Perhaps we have to.

Ms. Gigantes: For purposes of this committee's consideration, we have to be clear about what the act says, how it operates now and what is required under the act. It is not a psychiatrist. We need to be clear on that.

On the question of transfer, you have suggested that the amendment would mean that there could not be a transfer, for example, within a facility if there were a requirement for a more secure ward or a more secure facility, but that could not be made immediately under the amendment. If I could refer you specifically to the amendment, it says that the transfer can be made by the officer who is responsible and the hearing can occur afterwards. I want to be clear that this is what the amendment says. It does not say there has to be a hearing first.

Ms. Shushelski: It says if you feel it is an emergency, you can move the patient around.

Ms. Gigantes: That is right. It was the emergency that you cited to us as meaning we could not accept this amendment. But the emergency situation is provided for in the amendment, and it means there may be a hearing afterwards if the patient requests it.

Ms. Shushelski: Fair enough. In an emergency situation I understand that, but in order to get that movement going and to prevent any delay, you also have to fall into the emergency criterion, and if you do not, then you are going to--

Ms. Gigantes: The emergency criterion provided in the amendment says there is an emergency, period.

Ms. Shushelski: Okay. It depends on how you are defining that emergency, I guess.

Ms. Gigantes: That would be left to the discretion of the officer in charge under the amendment, which would be reviewable by the review board later if the patient so requested. I suspect that, in most cases, patients would not request it. I am no expert on speculating on that area.

You are concerned about transfers. It is being suggested that transfers are being done on a whim. I do not know whether you have read the report on the Oak Ridge facility done by Dr. Hucker, but he has suggested that an awful lot of the people who are resident patients at Oak Ridge have not been transferred there for reasons of treatment. They have been transferred there--and this is his opinion, not mine; I have never been to Oak Ridge--because health care workers in other facilities found it easier to transfer patients to Oak Ridge than to deal with them in the previous placement. That is his opinion.

Ms. Shushelski: I would not mind knowing all the facts surrounding that before--

Ms. Gigantes: You might take a look at his report.

On clinical record access, there is access now to clinical records. Why do you feel that access by a patient who had not been declared incompetent would be more unsuitable than the access now provided?

Ms. Shushelski: If you are talking about why I think it would be unsuitable, I do not think it is unsuitable for a patient to read the document as it pertains to him. There are times where it would not be recommended if it is going to bring harm to a third person or to that patient himself or herself. I also have serious concerns about the document being reviewed and the patient being allowed to make comments or corrections. We have not looked at that. We need more care on that because what are we talking about there?

Ms. Gigantes: The proposal is not, as you cited it in your presentation, that patients change records. It is that patients be allowed to review the records, ask for corrections where they think there are inaccuracies and, if the corrections are not considered to be supportable by a review board, then no correction would be made. There would be a notation put on the record that the patient had requested a change.

You have referred to these clinical records as "legal records." If they are to be legal records, things that can be taken into court, which they are, and they are also reviewable records for certain patients now, then it seems to me there is ever so much more reason, with as few restrictions as we can assume to be necessary, to have patient access to clinical records. When I say "we can assume," I mean on the basis of the studies of patient access to clinical records which, as far as we are told, and you have not presented any contrary evidence, indicate that there is no harm therapeutically in case after case.

Our assumption should be that it is very important for a record, which is not only a health record for the patient but also can be a legal record, to be one which is reviewable and correctable with as few reasons for a patient to have that right withdrawn from him as possible, because it is a basic human right. That is why we are dealing with Bill 7. It has something to do with the charter.

Ms. Shushelski: The patient does have the right to the clinical record.

Ms. Gigantes: Yes, but the reasons for refusing that right now are pretty wide.

Ms. Shushelski: Section 29 sets out the reasons for belief that there would be harm. I would have to look at it to get the exact wording, but it talks about serious bodily harm to other persons and I believe it says emotional harm to third persons.

Ms. Gigantes: I would want to discuss that before I would make any--

Ms. Shushelski: I think it is something to think about.

Ms. Gigantes: Yes, indeed, one does.

Ms. Shushelski: In your amendments, I think you have that left out, have you not?

Ms. Gigantes: I did it with great thought.

Ms. Shushelski: I think we might want to look at that again.

Ms. Gigantes: So we disagree on that then.

Ms. Shushelski: All right.

Ms. Gigantes: You also suggest the way the records are kept will be influenced by the fact they will be reviewable on wider grounds under the amendment. From Ontario Hydro or you name it, the people who have come before us on freedom of information--

Ms. Shushelski: You have got this thing about Ontario Hydro and the Ontario Hospital Association. I do not get the connection, but I keep getting it. For the record, I do not know why you keep comparing us to Ontario Hydro.

Ms. Gigantes: The words were so exactly similar. That is why it struck my fancy. In the two presentations, the fact that both institutions--and in this, they reflected most business organizations and major service organizations and so on--

Ms. Shushelski: We care for patients; we are a hospital. These are medical and clinical records. I appreciate, but it is a different sort of--

Ms. Gigantes: So does the schools system. We have introduced into our Education Act certain regulations for a pupil's right and a family's right to see educational records. When we did that, there was the same resistance from the educational institutions as there is from the health care institutions.

Ms. Shushelski: I think we have to look at this separately. We are talking about human beings, looking after human beings.

Ms. Gigantes: I keep records which are pretty personal in my office. When you deal with constituency cases--and you get all types in a constituency office and you get them in various states of mind--we keep records that are very personal. I have for years.

Hon. Mr. Scott: Is there any law that makes your records available to your constituents?

5 p.m.

Ms. Gigantes: No, there is not and I think there should be; in fact, I would be quite pleased to have people look.

Ms. Shushelski: Would you still write what you write now if you knew they were going to be looked at?

Ms. Gigantes: I have always felt that I should never put anything in a file that I would not have them read, because those files are their files. I have always objected to the way the medical profession has looked upon files made on me. I really have. At the local family planning clinic in Ottawa 10 years ago a nurse said, "Well, I wonder if the doctor did this or inquired about that on your case." I said: "Well, I think so. Just look it up here in the file. I think it is on this page because I remember when I was last there it would be three pages back." She whipped it away from me and she said: "Well, you cannot look at that," because that was her file.

Ms. Shushelski: She has every reason to do that.

Ms. Gigantes: Oh, did she?

Ms. Shushelski: She did it because it says--all right, were you in a public hospital setting? I do not know what city you are in.

Ms. Gigantes: No, this was a family planning clinic run by the regional health unit in Ottawa-Carleton. That is my file. That is not somebody else's file.

Ms. Shushelski: Perhaps she should have had a discussion with you and not whipped it away from you.

Ms. Gigantes: No. That is an instinctive reaction, my dear.

Ms. Shushelski: Oh no, I am not your "dear" either. Do not say that to me.

Ms. Gigantes: Yes, it is. On that--

Hon. Mr. Scott: It must have been quite a day at the health clinic.

Ms. Gigantes: Oh, listen. I do not fight about everything. Only important things.

Mr. Chairman: Ms. Gigantes, I have allowed considerable latitude with respect to--

Ms. Gigantes: Could I ask two other questions?

Mr. Chairman: That is what I was going to ask you to do. I am glad you are thinking exactly as I am at this point.

Ms. Gigantes: I only have two more anyhow.

Mr. Chairman: I wanted to get out of here and meet with our invited guests and have you question them so other members namely one of your colleagues, the member for Scarborough-Ellesmere (Mr. Warner) who wants desperately to get on the floor with some questions, as do members of the other party. So I will give you the floor back. Question, please.

Ms. Gigantes: On the question of competency, you noted that the situation is that now the doctor decides and that is the way it has always been. In fact, under our mental health legislation as it currently exists, as a result of all the work we did back in 1978, there is a review of the decisions of doctors about involuntary admissions. Let me suggest to you that the way it exists can be expanded. It is not going to throw the whole treatment system into chaos, I think, to have a reviewable situation for patients who wish a review. Not every patient dashes out for review as you know.

Ms. Shushelski: I certainly know what you are saying. I know the issues. I know what you want, what you are trying for here. I am not saying that this should not be reviewed. What I am asking is, why are we doing it this way when this other committee is working so hard on all these issues.

Ms. Gigantes: Because we have a Charter of Rights with an equality rights section and our legislation, in my personal view and in the view of my party, is out of step with the human rights of psychiatric patients in this province. Simply put, under law, I think they get a worse break than somebody charged with a serious crime. This is part of it as far as I am concerned. I would like that review process widened. If the problem is going to be--

Ms. Shushelski: Let us review it but let us do it in the form--there are currently persons who are working on this. I cannot see why--

Ms. Gigantes: My dear, excuse me.

Ms. Shushelski: Why do you keep using that?

Ms. Gigantes: Excuse me, but this is not the first time this issue has been raised in this province or the first time that I, as a legislator, have given it serious consideration. This debate is--

Ms. Shushelski: I think you would feel very (inaudible) reviewed presently. It is being looked after.

Ms. Gigantes: No, review is not looking after things and if a psychiatric patient now gets a good lawyer and goes to court on this question of a lack of equality under the law, that patient currently has a case in my view. On the question of limitation, you are suggesting that we make it two years to be consistent?

Ms. Shushelski: I think six months is much better. I am saying if there is going to be any type of a change, it would seem if there needs to be a change, if there really is a need for this, it would seem that you would

want it to reflect what else is going on at the hospitals and public--

Ms. Gigantes: I would choose two years, rather than six months.

Ms. Shushelski: Aside from six years. I do not know what the plan was here exactly, but it would seem to me that if the plan was to have a six year limitation period, then you would not want to have two different sets of--

Mr. Rudy: Consistency.

Ms. Shushelski: You would consider consistency. That is all I am saying is six months is much better from our perspective, obviously.

Ms. Gigantes: We could make it three weeks; that would be better still.

Mr. Chairman: Would the delegation like a rest after that? I say that with tongue in cheek.

Mr. Warner: I just have a couple of questions. First, I want to thank you for your presentation and the perspective which you have provided. In all these deliberations I do not think that any of the members lose sight of the high quality of care which is provided to the people of Ontario. The citizens of Ontario can be very proud of their hospitals and the staff who work there. The Ontario Hospital Association deserves a tremendous amount of credit with being able to maintain hospitals during 10 years of chronic underfunding by the former government. You have done a remarkable job just to stay afloat.

Mr. Rudy: Thank you. Shall we stop right here, Mr. Chairman.

Mr. Chairman: I give the member a certain amount of editorial licence and we usually correct him after his statement has been completed.

Mr. Rudy: I found nothing untoward in what he said, Mr. Chairman.

Mr. Chairman: I did not think you would.

Mr. Warner: That is always a problem when you are ahead of your time.

Interjections.

Mr. Warner: The two areas that I would like to key in on are on the assessment time. I am basing this both on the comments made by the Advocacy Resource Centre for the Handicapped and a doctor from the Clarke Institute of Psychiatry who made a presentation as well. There are two avenues worth pursuing. One is to either debate the number of hours, i.e. should it remain at 120 or should it be six or should it be somewhere in between; or you can provide a more immediate access and a guarantee of access to a review. Which of those two do you think is the more useful avenue to pursue--either debating the hours that it takes or should we ensure that a patient has the right to a review, and a relatively speedy one?

Mr. Rudy: I would like to start with that one and then my colleague can comment. I do not think that there is any simple answer. It is not one or the other. It needs careful and considered thought. Obviously there is a time period that is required from the point of review. I do not think anybody would argue against setting a time for the assessment. At the same time, I do not

think anybody would argue that at appropriate times there is not a need for the review process as well. However, it needs considered opinion. You need a lot of input from the professionals on that.

Ms. Gigantes: You did not mean from the time of the assessment. You meant from the time the person goes to the psychiatric facility for the assessment.

Mr. Rudy: Whatever. When we talk about 120 hours versus six hours--

Ms. Gigantes: Yes, that is the time between the person's arrival at the facility and the assessment at the facility.

Mr. Rudy: There is no simple answer to that one.

Mr. Warner: I can appreciate that, although it strikes me that it may not be as useful an exercise to debate the number of hours required for assessments as it would be to ensure that the patient involved is guaranteed some kind of appeal, an appeal process or review so the individual involved knows whether he or she is going to be there one day or five. No matter what happens they must have a certain guarantee which they can exercise.

Mr. Rudy: Section 1 of the Charter of Rights stated it admirably. There is a reasonable time but there are some practical difficulties that we have to try to come to grips with. We are not saying that these rights should be denied to anybody.

5:10 p.m.

Ms. Shushelski: You were talking about the reviewability of this period of time. You were mentioning their arrival at the psychiatric facility; what exactly are we talking about here? What would we want to be telling the patients? What would we want to be doing for the patients that we are not doing now if we were to change the situation when they arrive at the psychiatric facility? What would we be doing differently if you were to change the law? What would we do?

Mr. Warner: I am not sure that we are on the same wavelength. I come to this legislation with a wider perspective than the hospitals or the Mental Health Act. Everywhere in our society, and that is why we are dealing with the bill, Bill 7, citizens have certain rights and, as we do in terms of the law, we try to guarantee that someone is not locked up by the police without the opportunity for some protection, an advocate, someone who will act on their behalf, whether it is the lawyer or somebody else who is going to act on their behalf to safeguard their rights.

Ms. Shushelski: What you are saying is that right now, in psychiatric facilities, if a form 3, an involuntary certificate is filled out on a patient, they are advised they have the right to a lawyer. Is that what you are saying? You are saying we should change that so all persons who are admitted to a psychiatric facility on a form 1--is that what we are talking about--

Mr. Warner: I am saying that anyone who is going to be held for an assessment has the right to have that decision reviewed at some point in time. I would hope that, since it is also a precept of our judicial system, it is a speedy course of action. In what is attempted through our court system, we do not always succeed, but we make the attempt. I am suggesting that the same

kind of appeal be available to every individual who happens to find himself or herself being brought to a hospital not of his or her own volition. That is all I am saying. Rather than--and that is why I raised it--debating whether it should be six hours or 31 hours or 103, it might be more constructive to look at the appeal process involved in an attempt to secure one that is definite and is relatively speedy.

Ms. Short: You would not need to have the time limit if you could be sure you could call a review promptly. That is a good idea, but now, with so many people involved in the process, could you assure that within a reasonable time frame?

Mr. Warner: That is why I asked for your opinion.

Mr. Rudy: I can certainly speak to this from some experience in other provinces and from my grounding in mental health treatment in those provinces. There certainly was a review procedure in place. Again, we run into the practical problems of how long and how often the review committee will meet. On what basis are they going to be constituted in a province like Ontario. Do you simply have one? Do you have several? There is a question of cost. It is a fairly complex process, but in principle, I am not sure that we can disagree. There are some practical difficulties and that is what we have been trying to say all along. Let us proceed cautiously, there are some real practical problems that need to be talked through and thought through.

Ms. Shushelski: Also, the hospitals, the doctors--we have to have a situation where we all sit down and really look at this very carefully before determination is made that may not fit the bill.

Mr. Warner: The other one--and I will try to be brief on this--is around the question of access to records. In the previous presentation, it was mentioned that an experiment took place at a Washington hospital, the results of which indicated that there were no negative effects from patients being allowed to see their records. Are you familiar with that study?

Ms. Shushelski: No, I am not.

Mr. Warner: You made suggestions to us and I do not know whether it is my place to make suggestions to you, but I have always been amused by the reluctance over the years of various individuals in various sectors of society to allow people to see records. I can understand this if it is going to bring harm to oneself or to someone else; that is cause for concern. However, I have never seen that materialize. I will go back 20 years to when I first started teaching school. It is hard to believe. It was at the age of 12, bright little lad that I was at the time. I have gone downhill ever since I arrived here. At that time, every piece of paper about a student was to be kept under lock and key. There was an almost paranoid idea that you could not let anybody see students' records.

After I taught there for a while, I began to realize why. It was because of some of the really bizarre things that were written on the records. What happened was that at some point parents got the opportunity to see what was on their child's record. Somehow, until that point, parents were less important in relationship to the child than the teacher was. The teacher could see what was written about the child, but the parents could not. Suddenly, parents could see reading scores, IQ scores and anecdotal remarks.

Guess what? Nothing bad happened. One of the good things that came out

of it was that the records were cleaned up. More thoughtful comments and constructive things were put on the records. Even more careful documentation about academic progress was put on the records. Now, lo and behold, students can see their records and the world has not come to an end. I suggest that it is constructive to allow individuals the right to see their records. I am not sure whether I really want to see my medical record, but I should have the right to. There might be little chicken-scratchings that I would not understand and there might be terminology about various illnesses that I have succumbed to over the years that I would not understand, but then maybe I will ask the doctor. I cannot see why allowing people to see their medical records should be such a problem.

Ms. Shushelski: You are speaking as if you have no right to see your records. When we were here the other day, you spoke about this with in-transit medical records. I made it very clear that there are mechanisms by which you can. It does not say that you cannot see this record. There is nothing that says that. To understand the amendments you are making to section 29, are you adding two subsections to section 29 and that would keep all the other sections of 29 if it were to be--I want to ask about that while we are on this.

Mr. Warner: Are we adding to section 29?

Ms. Shushelski: Is the proposal to take out all of section 29 and substitute subsections 29(2a) and 29(2b), or are you proposing putting in subsections 29(2a) and 29(2b) as an addition?

5:20 p.m.

Ms. Gigantes: That is right

Ms. Shushelski: It is.

Ms. Gigantes: If I remember correctly.

Ms. Short: There is an evolutionary process going on in society in general in the attitude to information. Hospitals recognize that, but when you are dealing with patients and patients' records, there is nothing to be gained by moving too fast. The whole issue of access to records by patients and by others has to be carefully looked at. Rather than introducing anything too dramatically overnight, the whole issue has to be looked at.

The Ontario Hospital Association has always taken the position that every individual has a right to the information contained in his medical record, but as we said to the Krever Royal Commission on the Confidentiality of Health Records in Ontario, we believe it is better at this stage to do it in a staged process by making sure that patients have an adequate explanation when they see their clinical and medical records, so that you do not just hand the records over to them in any way. The evolutionary process can be taken gradually and in a considered way, particularly when it relates to health information.

Ms. Gigantes: This is the next step.

Ms. Short: It must be taken one step at a time.

Ms. Gigantes: This is the next step.

Ms. Short: Maybe in some ways it is.

Ms. Shushelski: I do not believe the patient is precluded from seeing the clinical record. Perhaps it is true that we ask the patient have an explanation when he or she sees the record. In the hospital setting, why not sit down with the physician and let him or her explain what is going on in the record? You may misinterpret certain things in it if you do not understand the terminology or if you go straight for the dictionary and say: "Aha, so I have protoketonuria, do I? I will look it up." It may be an incident where the urine sample showed it for one moment, but in fact you do not have diabetes or something such as that. You do have access to the records. It is there but it should not be carte blanche and you figure it for yourself. It would be irresponsible, would it not, to do that?

Ms. Gigantes: That is not what is proposed.

Ms. Shushelski: The proposal is in your proposed subsection 29(2a) of the Mental Health Act as set out in your proposed subsection 31(8) of the bill, "the officer in charge shall disclose or transmit the clinical record to...the patient."

Ms. Gigantes: The officer may decide not to do that for good reason, in which case he shall notify the review board.

Mr. Warner: The officer might say: "We did not have the opportunity to involve the physician of record. Therefore, I am denying access to the file at this point." The points you make are well taken. I am not trying to put myself in the place of someone. If I wanted to see my file, naturally I would want someone to explain it as well. It would be a little silly for me just to go and read the file if I did not understand it. These amendments are not irresponsible. They are suggesting there be a process involved with a balance of powers.

Mr. Rudy: I am a little perplexed here. Why is there such an aversion to having the physician interpret the record?

Ms. Gigantes: There is not.

Mr. Rudy: You said the record should be turned over to the review board.

Ms. Gigantes: No. Under the amendment, it is if the officer who has the file decides the patient should not have access to the file for specified reasons.

Mr. Rudy: Judgement number one.

Ms. Gigantes: Yes, there is a judgement call there.

Mr. Warner: By the officer.

Ms. Gigantes: Then the officer shall deny access and notify the review board that access has been denied, at which point the patient can ask for a review of that decision.

Mr. Rudy: Now I am really confused, because Mr. Warner just gave us a nice presentation of why everybody should have access to his records and

would it not be a great thing, and bingo, right off the bat, there is a provision for the officer to deny that and turn it over to somebody else.

Ms. Gigantes: It is an evolutionary step.

Mr. Rudy: There are some problems here.

Ms. Gigantes: This is the next step. This is not irresponsible casting of files to the wind.

Ms. Shushelski: Now that we are into it, we might as well discuss, whether we had intended to or not, your proposed amendment subsection 29(2b), as set out in your proposed subsection 31(8) of the bill, that the officer in charge can go to the review board to review the decision to give it over to the patient only if he or she believes there is "a substantial risk of serious bodily harm to a person other than the patient." What are we saying there? Does that mean it is only if there is serious bodily harm and emotional harm you do not discuss? Is that right?

Ms. Gigantes: That is my preference.

Ms. Shushelski: And it is only if it is to a person other than the patient, so if there is any emotional harm that can come to the patient, clearly we have to give it to the patient because it does not fall within subsection 29(2b).

Ms. Gigantes: That is my preference. That is what I am proposing.

Ms. Shushelski: I disagree with that.

Ms. Gigantes: I know. We had that disagreement earlier.

Ms. Shushelski: Okay, so I have said it again.

Mr. Warner: I am sorry to wake up the chairman, but I am finished.

Mr. Chairman: The chairman is wide awake and is listening with great interest to the debate. We had another conversation going with the Attorney General (Mr. Scott), as a matter of fact.

Mr. Warner: I am sorry for taking so long. Thank you very much and I appreciate it. I hope you appreciate that the amendments put forward are done so in a constructive spirit. I hope you can go away with only the feeling that this is not some kind of hasty thought in an irresponsible way, either to let files out loose on the streets or not to have adequate care for patients. This is the result of ongoing work from 1978 when the act was changed--

Ms. Gigantes: From before.

Mr. Warner: --and from before, and it is an evolution in process.

Mr. Rudy: I thank the members for this discussion. It is very constructive and I do not want to leave the impression with anyone that we are against change, progress and evolution in the provision of mental health. We certainly are not. We think there are some practical difficulties. We think it needs to be talked through. There are a lot of players in the game here and, Mr. Chairman, I guess we said it best to you in our letter of last week. We said that we had reviewed these amendments and that while they warrant a lot

of thought and discussion, we do not believe that they should be put through in a hurry and we believe that the impact of them should be looked at very carefully because of the seriousness of this whole thing. We are not negative about changes and improvements in mental health.

Mr. Chairman: Before the delegation leaves, I want to make a couple of comments. I have canvassed the members and I do not see any additional questions at this time, so as chairman I will take the prerogative of raising a couple of questions.

It goes without saying that every member of this committee wants to develop a kind of balance and sensitivity that we feel is essential in providing the best kind of service delivery to a very difficult type of patient. I appreciate the comments you have made with respect to making absolutely certain that we do so in a cautious way. Ms. Gigantes has referred to it as being evolutionary, a step at a time. There may be others who do not look at it as being in need of that kind of evolutionary process, but we will get into that debate in the clause by clause and when we look at the amendments themselves.

One of the areas I have some concern over is this entire dialogue that has taken place in the debate over the difference between the six hours and 120 hours for analysis and assessment purposes. I have tried to listen in an objective way to both sides of the argument. At best, from what I can gather, there was an arbitrary number chosen of 120 some time ago and that number has been what we have lived with up until this time. There has been a rather dramatic proposal, dramatic in the sense that it shifts the period of review down to only six hours.

5:30 p.m.

From my perspective, I see some difficulties with that, one of which is the obvious difficulty of a patient coming in on the weekend, not being able to get hold of a doctor or family or other contacts a doctor may have to make, if in fact you can acquire a doctor in that short time. That being the case, and I have not heard you mention this number yet, but if you were to alter that number--I thought Mr. Warner was getting at this. I listened carefully, sir. I want you to know I was not allowing my attention to stray during the course of your questioning. If you were to choose a number for that review period, the assessment of the patient, have you come to a decision as to what that should be? You are arguing for 120 hours, as I understand it, but do you think it should be more than that or could you accept a number, as Mr. Warner said, something in between or whatever?

Mr. Rudy: We have deliberately stayed away from the numbers game here this afternoon. It would be very simple for us to say, "Yes, it is enough," or "No, it is not enough," or something like that. What you need is more professional input into this question. The Ontario Medical Association should be involved in that. It is not an arbitrary number in any way that you would think of. There has to be an appropriate determination of what is an adequate period of time to make an honest and real assessment. Whether that is 72 hours, 120 hours or six hours is where the debate is at. You have to have professional input into that.

Mr. Chairman: As I understood the OMA's position it they came before us, it was not in sympathy with a reduction in the number of hours. Their position was to argue for the status quo, a retention of the 120 hours. Is it

fair to say that? I certainly did not get the impression they were looking for any reduction.

Ms. Gigantes: When we discussed that matter, both in committee and informally afterwards with Dr. Hoffman, he suggested that we meet the concern that exists, because we are trying to amend this legislation to bring it into reconciliation with the charter, by providing a much more immediate review process. There may be problems with that proposal, too, which we will have to get into. Providing a quick review may be even more difficult than providing a quick assessment. To make the review process real at an earlier time than five days may be without possibility. We have to look at this matter quite carefully and discuss it quite carefully. I do not think it is simply a matter of trading one or the other.

Mr. Chairman: I disagree with that. The period of detention, if you want to call it that, for the proposed patient concerns me. It has been raised in a number of different ways, but I still have some difficulty in getting a handle on what is an equitable and realistic balance, if there is going to be an alteration of the number. I do not know that any number chosen would necessarily be the magic elixir to this whole exercise. We are stuck between the amendment as proposed by Ms. Gigantes for six hours and the status quo, which is 120 hours. I have not seen anything come forward between the two.

Mr. Rudy: What has really bothered us, with all respect to everyone, is that this has all come forward with a great deal of haste. While there has been representation from the OMA and one psychiatrist, and I do not deny that his opinion is valid, I would prefer to see a little broader input from the section on psychiatry or the group as a whole because there are some fundamental issues involved here.

If you were to ask me what my thought was, I would give you my cautious response. I had not, aside from the comments of the one member, been aware of any problems with the physicians. I do not believe they have said there are problems with the 120 hours. Until they can be talked into it, I believe in the 120 hours. You have asked me for my opinion, so I have provided it for you.

Ms. Gigantes: When we had the discussion in 1978, the physicians told us that 120 hours was much too short. You are indicating to us that they have not had problems, and certainly Dr. Hoffman did not indicate any problems and nor did his colleague. I think it is then fair to say that what we are looking at here is not a question of physicians' problems. We need to put that aside somewhat for a moment and take a look at our objective in Bill 7, which is to look after the rights of the person who is being detained for assessment, even before being called an involuntary patient.

Ms. Shushelski: I know what you are saying. If you are asking for a quick answer right here, I do not know if that is fair. Maybe it is fair, but it is not practical. We would probably want the opportunity to get input from the psychiatrists as a whole. In fairness, they are the people who--

Ms. Gigantes: In fairness, we have been dealing with this matter for many years in this Legislature.

Ms. Shushelski: Has the Ontario Psychiatric Association been before you? The Ontario Medical Association has and we have. I do not think the psychiatrists have been before you, have they?

Ms. Gigantes: They certainly were in 1978.

Ms. Shulselski: My God, that is nearly 10 years ago.

Ms. Gigantes: That is right. That is why we should be making changes.

Mr. Chairman: Girls.

Ms. Shushelski: I do not think we should be making decisions without getting--

Mr. Chairman: I just wanted to comment, since Ms. Gigantes was inserting herself in this discussion, that--

Ms. Gigantes: I was just providing necessary background.

Mr. Chairman: We appreciate that and we knew it would be forthcoming at some point, but the point I want to make to Ms. Gigantes and our delegation is that from my perspective we have to be very careful to make sure we do not make alterations that are political in whatever fashion in an attempt to comply with the Charter of Rights, which it is obviously essential that we do. As we are complying with the charter, we still have to be very careful that we do not make alterations on this committee that are going to upset the kind of work that is being carried out by the people who know most about the problem. We are politicians; we are not psychiatrists.

It is so essential that we get input into this question from the health care providers, those who are in the front lines of delivering services, as well as groups that are obviously supporting the needs of the rights of patients in the circumstances that we have looked at. All of those circumstances should be taken into account, but we should not make changes simply for the sake of making changes. We should make changes that are cautious and in the best interests of the patient. The bottom line is what we can do to improve the kind of health delivery we give to patients and at the same time protect their rights. That is really what this exercise is all about.

Ms. Gigantes: When we are talking about the period of assessment there is no patient. There is a person who has rights, human rights, civil rights under our legislation.

Mr. Chairman: That is why I called him a proposed patient.

Ms. Gigantes: No, you called that person a patient. That person brought to a psychiatric institution is not yet a patient.

Mr. Chairman: Hansard will prove this point. In my preamble and in my earlier remarks, I talked about a proposed or prospective patient in that period of analysis that would come between the hours in question. I fully appreciate the fact that they are not patients at that point.

Hon. Mr. Scott: Why do we regard patient as a pejorative term? I jump to your defence, Mr. Chairman.

Ms. Gigantes: Because as soon as we say patient, there are limited rights.

Ms. Shushekski: Just to clarify something here, we are saying you are not a patient until you get to the psychiatric facility.

Ms. Gigantes: You are a detainee until somebody says you shall be involuntarily admitted, or you can be voluntarily admitted or released. That is what section 9 says. Is it section 9?

Mr. Rudy: I am sorry, I disagree. It could be a person looking for help.

Ms. Gigantes: It could be a person looking for help, but if you are held on an application by one of the authorized people on a form 1 that is accepted, then you are a detainee until somebody has decided that you are a involuntary patient, a voluntary patient or released.

Ms. Snort: The point is that if the length of time is shortened by any significant amount then, as Mr. Warner says, you have to be ensured that it is feasible to get the review in that time.

Mr. Chairman: What concerns me in that whole exercise is that the fail-safe for the physician at that particular point is simply going to be to move to a form 3 immediately. I do not see that as being in the best interests of the patient either.

Hon. Mr. Scott: Proposed patient.

Mr. Chairman: Proposed patient. Thank you.

Ms. Shushelski: If it ain't broke, why are we fixing it? There may be an argument here about that, but nobody is coming out and saying, "That is 120 hours; it should be 80 hours."

Ms. Gigantes: Would you like a Supreme Court case on this one? You can have one. If we do not do anything, that is what you will be out there fighting.

Mr. Chairman: Possibly.

Ms. Gigantes: Quite possibly.

5:40 p.m.

Mr. Rudy: What I hope our message has been is that we do not want to be terribly negative, but we have had some real major concerns and they are concerns about practical problems. If you can back off this issue enough to provide enough input, broadly speaking, we would prefer it. There are some, and you said it best. It is the patients we are talking about here. The patients are people or citizens requiring help. We should all back off and take another look at this and debate it in a way that we can reach a consensus amongst the professionals, ourselves and yourselves. It is very important.

Hon. Mr. Scott: If I can intervene, the issue is not really one so much of implementing a policy that has been selected, which would perhaps allow us the kind of time frame you are talking about, as it is of making our statutes immune to attack from the Charter of Rights, although it sometimes looks different. In this analysis, we are envisaging the prospect that a charter challenge will be raised by a patient who has been held under the

120-hour rule. That patient will say it is a restraint, as it clearly is; there is no question about that.

The question for the court will be, is it a reasonable restraint justified in a free and democratic society? Therefore, the issue is to pick a time when you and the psychiatrists and the doctors can satisfy the court is reasonably necessary and would be justified in a free and democratic society. The purpose of this exercise is not to impose constraints because we are in the business of legislating. It is to review the statutes so we will not be fighting court cases we are going to lose. You may say: "We have nothing to say about it. We are merely the hospital, not the doctors." But in that context, would you judge 120 hours to be a reasonable period justified in a free and democratic society? It is a tough question.

Mr. Rudy: It is a tough question, and I would answer it this way. We could put our heads together and say, "Okay, maybe 72 hours is a better number," but somebody could still challenge that number too. You would still end up in court.

Hon. Mr. Scott: Any arbitrary number will be challenged.

Mr. Rudy: That is right.

Hon. Mr. Scott: Therefore, you cannot avoid the initial challenge. The question is, is the Legislature going to fix a time that will be sustained or are the courts going to fix the time? With the greatest respect to the courts, one of the troubles I have is that, while we often have to work with inadequate material, they are often placed in an even worse position than we are to make that kind of judgement. Therefore, when the challenge comes, we want our statutes to be in the best possible position to deal with the challenge. What we want is your help, not to help us plan an ideal world, but to plan a world in which, when those challenges come, the statute will be in shape to address them.

Mr. Rudy: We accept that challenge. I would not want to come up with a fast answer here. I hope you are not looking for a fast answer either. I recognize the difficulty. It would be preferable from our point of view for that decision to be made legislatively rather than in the courts. I come back to the initial premise that, for a short period of time until we can have more consensus on what the number is, let us stick with 120 hours because we have not been aware of any serious problems with it, albeit now there is a new angle to it through the Charter of Rights. I believe the answer to that question requires a fairly honest, considered opinion by all the players.

Hon. Mr. Scott: Let me add one note. Perhaps the reason you have not had any serious problems with it is that until the charter, there was no opportunity for a problem to be presented by someone other than a hospital or a doctor. Under the charter, the problem can now be presented to the court by, forgive me, an actual patient at that stage. That is the question.

Ms. Shushelski: From what I have been hearing from Ms. Gigantes and possibly from the chairman, the question I have is, is there a choice we are being asked to consider or is 120 hours a reasonable amount of time? Should we consider 72 hours as more reasonable or should we consider leaving it at 120 hours and review each and every patient that is put on a form 1.

Hon. Mr. Scott: That may be an issue, but the unfortunate question, which no one invites but is on the public plate these days is, is the

restraint reasonable? That has to be considered against the background that every case is going to be different and against the background of the interests of the public, hospital, doctor and patient being given fair weight, one against the other. A busy doctor or a very cautious and careful doctor may want the longest period to make sure that what he was doing is absolutely sound. A hospital, confronted by all other kinds of administrative problems, may want a shorter period and the patient, as you can imagine, may want the shortest period of all. Where is that line that comes closest to satisfying all interests?

Ms. Gigantes: The person will want the shortest period.

Hon. Mr. Scott: Yes, sorry. The person.

Mr. Chairman: Or the proposed patient, whichever the case may be.

Hon. Mr. Scott: It is a very difficult question. Let me give an example. We were dealing earlier with the sports amendment, which is the amendment that removes the Human Rights Code provision with respect to the inability of women to complain about discrimination in sports. I do not ask you to make any submissions on that. I ask you to note that we were addressing it from our point of view not as a policy or the question of whether it is good, bad or indifferent, but as a government in terms of how to make our act consistent with the charter.

Sooner or later, when we address a whole host of issues in the future such as mandatory retirement and a wide variety of things, the issue will not be, is this what we would do if we were kings? The issue will be, what do we have to do to comply with the interdict of the charter? It is very tough, but thank you for your help. You will not give us a number, except 120 hours. That is fair. I am not asking for anything else.

Ms. Shushnolski: I hate to leave it. Maybe we are getting our point across, but it cannot be heard. This is a very important question. We would like to go back and speak to people who have to deal with this, explain the situation to them and ask, "Do you think we could come up with a better number or do you think the person we have to keep 120 hours needs this right of review immediately?" Is that not what we have to do or are we saying we have to make the decision now and come up with a number? We would be coming up with a number that might not be a fair number.

Hon. Mr. Scott: We want to make the decision before a challenge is launched. When a challenge is launched, if it succeeds and there is then a blank in the statute, the court may recommend a number, but it cannot amend the statute. A successful challenge will put a blank in the statute. Then we know where we are. That is why this exercise is very tough. I am not trying to make it more difficult for you. I am trying to explain what motivates all members of the committee where, in a very nonpartisan way, we are addressing these difficult questions.

Mr. Rudy: We could give you our undertaking to give our best considered opinion on that after consulting with people we would want to consult with.

Hon. Mr. Scott: That would be very helpful.

Mr. Rudy: In looking at it from the point of view of the Charter of Rights, what are the reasonable limits prescribed by law? What is reasonable?

we are not Solomon sitting here, but if we consult the right people, we may be able to help you or give our best shot at it.

Hon. Mr. Scott: We all better get in shape to be Solomons as quick as we can.

5:50 p.m.

Ms. Gigantes: There are some on this committee who, even before the Charter of Rights was in place, were anxious to see the changes I have proposed, namely, me.

Hon. Mr. Scott: There is no question about that.

Ms. Gigantes: For some of us, it is a policy matter. It is a basic view of how people should have their rights protected under law. That was true in my case even before there was a Charter of Rights. If you refer back to Hansard in 1978, you will find words from me and words from my colleague Jim Renwick saying generally much the same thing.

Hon. Mr. Scott: The traditional wisdom of the member is correct. There is no quarrel about that. I admire your views.

Mr. Rudy: Before we leave this, we consider it an important issue and we want to get back to you within an appropriate period of time. Can you help us out? Is it next week?

Hon. Mr. Scott: I think probably it will be up to the chairman to say, but I suspect that probably the case you are making is to leave the 120 days because we have to report this bill at some stage. You would like to research it, but you are making the case for 120 hours--did I say 120 days?--and then as soon as we can, we will let you know what from our point of view is reasonable. I think that that is the way. I do not think anything else is practical.

Ms. Gigantes: Did you mean we would not deal with this item during the Bill 7 discussions?

Hon. Mr. Scott: No.

Mr. Chairman: Let it be known both to our delegation and members of the committee that by unanimous consent of the committee it can be opened up at any time before the matter is totally finalized. If we picked a number and we were to get information back from the Ontario Hospital Association with respect to an alteration of that number, and if it was agreed by the committee that we would reopen the matter to look at it, that could be done as well.

Hon. Mr. Scott: I think the delegation will understand that the bill deals with a whole host of other statutes and we want to report the bill whenever the committee is read. I do not think we can promise to leave it open. We would not want to put the constraint on you in terms of reporting that you might find as unpleasant as the fact that you are even here.

Mr. Rudy: It has been a very pleasant discussion as far as I am concerned.

Hon. Mr. Scott: Can I congratulate the Ontario Hockey Association--the Ontario Hospital Association--on what they are doing to get

ready for pay equity? Will you tell your people I know what you are doing? I think it is terrific.

Mr. Rudy: I certainly will. Hockey is in my other life.

Hon. Mr. Scott: Forget I even mentioned that

Ms. Shushelski: As long as you do not say either.

Mr. Chairman: On behalf of the members of the committee, and I know under somewhat short notice, I would like to thank you for the representations you have made before us. They have been very helpful. We have had a spirited discussion about some very difficult areas of the bill and the proposed amendments. I realize you have not had a great deal of time to muster up all of the information you would like to bring before us, but it has been helpful and I thank you for that on behalf of all the parties represented here and all the members of the committee.

Mr. Rudy: Our pleasure.

Mr. Chairman: Members of the committee, I think we can turn back to clause-by-clause discussion on the bill now. Any difficulty in doing that? Does the Attorney General have any preliminary remarks before we begin?

Hon. Mr. Scott: I have none. Mr. Ward, the parliamentary assistant to the Minister of Health, is here. With your permission, I am sure he can participate as well as I. He knows a great deal more about medical questions than I do.

Mr. Chairman: We are on section 31.

Members, so you are straight on where we are with respect to amendments, I believe you all have received from the clerk a revised package of the amendments. It would probably be in everyone's best interest if you allowed the other old amendments to flow off into the land of used-up-amendments, and if you turned only to the new set of amendments you have on section 31. That will simplify the process somewhat. It is a package the clerk has provided you with.

They are numbers 1 to 63. It has a little elastic band around it, unless you have removed it. We can start with that. Mr. Ward, do you have any comment in connection with the first amendment?

Ms. Gigantes: If I can raise a point of procedure, Mr. Chairman, we have a whole series of amendments which affect certain topics within the Mental Health Act. I am wondering if it makes sense for us to deal with the amendments topic by topic. Let me give you an example of why I suggest this.

Our first amendment will change the definition contained in the front section of the act of who the nearest relative will be for purposes of proxy consent. Other amendments later in our package deal with the question of how proxies are chosen.

If we pass the first amendment and later decide on my amendment to have a different process of choosing a proxy, we will have to go back and delete this amendment. I am wondering if we could get some assistance from staff and deal with these topic by topic. We have questions relating to admission, transfers, competency, determination of criteria, proxies, restraint, file access, limitations and procedures.

Mr. Chairman: I do not have a problem with that other than that you will be jumping around, and the chronological order set up in what you have before you will not be followed. That is not a difficulty. Do you have a package proposed with respect to how to proceed based on 1?

Ms. Gigantes: If we are looking at 1, we are dealing with the question of who gives proxy consent. I have numbered the amendments I have introduced. I have them noted in a package. Perhaps there is an alternative discussion here.

Mr. Ewart: On the point you make on the proxy consent issue, we have an amendment to what is in the bill. If that carries, you have an amendment to delete all of 1(j). If that carries, we are then into the proxy consent. If it does not carry, then there is no need to go further in the bill. One might wait and see where we get on that issue.

The rest of them seem to be in packages, pretty much in chronological order, as they have been organized. That is the only one that seems to have a substantial jump on our organization of the material.

Ms. Gigantes: On your organization of your amendments.

Mr. Ewart: No, including yours.

Ms. Gigantes: That is not the packaging I have. For example, on the question of file access, I would be dealing with 7, 8 and 13; on status on appeal, it would be 10, 14, 15 and 16. I am happy to go ahead as long we have a handle on what we are doing and as long as we recognize we may have to go back and delete. It is very complex.

Mr. Chairman: I do not have a serious problem with that. We can ad hoc it a little as we go along, if you like. If further work carries out of an amendment being supported, as you propose, then why not point that out during the preamble to your comments and we will deal with it as we go along, unless other members of the committee have strong feelings to the contrary. I am trying to simplify it because it is a complicated package of amendments.

Ms. Gigantes: Let me give notice that I am going to need assistance on it. Given that we have that many pages of amendments, I can barely tell which ones are mine, which ones come from the Attorney General and how they interrelate, and I do not think anyone can blame me.

Hon. Mr. Scott: I find that a most extraordinary remark. You cannot tell my amendments from yours?

Ms. Gigantes: It may be extraordinary but it is true.

Mr. Warner: Yours must be improving.

6 p.m.

Ms. Gigantes: As you are aware, Minister, some overlap.

Mr. Chairman: There is, as the Attorney General pointed out to me in a previous conversation when the chairman was not in a catatonic state, as Mr. Ward suggested--

Ms. Gigantes: Warner.

Mr. Chairman: Mr. Warner suggested it, not Mr. Ward. Sorry. The Attorney General and I had a conversation, and there are some amendments that overlap to a certain extent. We will point those out as we go along for purposes of understandability, if you will.

Ms. Gigantes: Thank you.

Mr. Warner: That is what we wanted. Marvellous.

Mr. Chairman: Mr. Ward, do you have any preliminary opening remarks to make with respect to the Ministry of Health position?

Mr. Ward: Not really. There are a number of government amendments and when the time comes, we can have the staff comment on them. There are three or four issues raised by Ms. Gigantes's amendments and, at the appropriate time, we will provide comments on those.

Mr. Chairman: Ms. Hart moves that subclause 1(j)(ii) of the Mental Health Act, as set out in subsection 31(1) of the bill, be struck out and the following substituted therefor:

"(ii) if none, a person of the opposite sex with whom the person is living outside marriage in a conjugal relationship and who has attained the age of sixteen years and is mentally competent, if the two persons,

"(a) have cohabited for at least one year,

"(b) are together the parents of a child, or

"(c) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Mr. Partington: If that amendment passes, then under the definition of "nearest relative," you eliminate children. Should children be in after "spouse" or after the (a), (b) and (c)?

Hon. Mr. Scott: I do not think that is the intention. It does not have the effect. It is a subclause (ii).

Mr. Partington: Yes, but subclause (ii) is where children are mentioned.

Mr. O'Connor: If we delete it and put this in, we have eliminated children.

Hon. Mr. Scott: I see the difficulty. You are reading from the old Mental Health Act instead of the bill.

Ms. Gigantes: There is something wrong here.

Hon. Mr. Scott: As I understand it, the purpose of this is to take out subclause 1(j)(ii) as it appears in the bill and to amend it in two particulars, to lower the age to 16 and to deal with the common law spouse question, as we have done in other proposals under the bill.

Mr. Chairman: Mr. Partington, did you complete your comments?

Mr. Partington: Yes, I understood, it fits with Bill 7.

Mr. Chairman: Mr. O'Connor, are you satisfied?

Mr. O'Connor: Yes.

Ms. Gigantes: Perhaps somebody could remind me, under the Family Law Act, as amended, are you a spouse if you have cohabited for at least one year, even though you are not married?

Hon. Mr. Scott: No, if I recall correctly, it is three years. You will remember the debate about whether we say "spouse" alone or whether we say "spouse if the two persons have" and then give some objective tests.

Ms. Gigantes: I find it difficult to understand why "nearest relative" is going to mean, in subclause 1(j)(i) the spouse and in subclause (ii), this other person who is also a spouse.

Hon. Mr. Scott: As I understand it, if subclause 1(j)(i) is read against the new subclause (ii), it deals with two different categories.

Ms. Gigantes: Could I ask in regard to this amendment whether there are concerns in the ministry about the whole question of having a relative be the proxy necessarily in descending order? In a question put to us in the presentation given to us by Carla McKague she asked which one of her three children would give the proxy consent for her. Is that determined simply by the doctor going to one, two or three children and choosing one?

Mr. Chairman: I guess you are asking whether that question presents medical issues.

Ms. Gigantes: No, I do not mean medical issues. I mean legal issues. She described to us a case in which a doctor had gone to a spouse and asked consent for treatment, then had gone to the father and asked consent for treatment and I think had gone to another relative and asked consent for treatment, and was refused three times.

I am pleased to note that in this amendment at least the spouse who will be able to give proxy consent would be a spouse one is living with; but as we know, sometimes people live with spouses who abuse them.

Hon. Mr. Scott: The intent of this legislation is to establish, in the lingo of another industry, a seniority list for "nearest relative." That is why after the first category each of the other categories begin with the expression "if none."

Ms. Gigantes: I understand the purpose.

Hon. Mr. Scott: What is contemplated and what the statute requires is that you cannot go relative shopping. If, for example, there is a person to whom the person is married--

Ms. Gigantes: What about the children or brothers and sisters? There is no list there.

Hon. Mr. Scott: No, but the question here is to determine which person will make the decision.

Ms. Gigantes: Right.

Hon. Mr. Scott: I do not think anyone intends that you should be able to go to a wide range of people, as Ms. McKague may have suggested, until you get consent from one of them.

Ms. Gigantes: But that is still possible within these clauses:

Hon. Mr. Scott: How?

Ms. Gigantes: I am not talking about the amendment. I am talking about the clause the amendment fits into in the Mental Health Act, clause 1(j), which says:

"(iv) if none or if neither is available, any one of the brothers or sisters who has attained the age of majority and is mentally competent, or

"(v) if none or if none is available, any other of the next of kin."

The whole process here bothers me, and I will flag it. For example, in the amendment that is proposed, we do know that people live with abusive spouses. I wonder about a situation--and I am not talking about a medical or emotional situation but about a legal situation--which permits a spouse, who may not be the best person to give consent for treatment, to give that consent.

6:10 p.m.

Hon. Mr. Scott: You are dealing with what you obviously recognize to be a very complicated issue. It is one with which the Fram committee on substitute decision-making is trying to grapple. If you do not go to the nearest relative, how do you make a qualitative judgement about which relative is most likely to have the interests of the proposed patient in mind? That is a very difficult question because it may be that in a given family, to take a horrible case, the nearest relatives do not have, for some reason, the best interests of the proposed patient in mind.

Ms. Gigantes: But this is a real patient. The question here is consent for treatment.

Hon. Mr. Scott: I am sorry. Yes, but the same issue presents itself. The tradition of the law has been to go to the nearest relative and that is what section 31 is designed to do, not to permit relative shopping, which is an evil in itself.

Ms. Gigantes: We have not finished that job because we have not set out any comparable kind of distinction among brothers and sisters, children and next of kin.

Hon. Mr. Scott: What you are really asking the committee or the Legislature to do is to build in something that will permit a qualitative decision, not who is the nearest relative, but who is the best relative. That is what you want.

Ms. Gigantes: Or other person.

Hon. Mr. Scott: Yes. You do not want who is the nearest. You do not want an objective test. You want a subjective test, who is qualitatively the best. That is an extraordinarily complex problem which I do not think we can really approach in an equal rights act. That is why the Fram committee, in substitute decision-making, is looking at this kind of issue. What we have to

focus on here is our capacity to make the bill comply with the charter. We are not involved in trying to make the Mental Health Act the best possible Mental Health Act here. We have that responsibility, to which we will address ourselves, but not in a package of charter amendments.

Ms. Gigantes: It is the charter impulse that requires, in your view, the amendment that is before us.

Hon. Mr. Scott: The charter impulse should not be allowed to justify wholesale policy review of statutes. The charter impulse, and why I am here rather than the Minister of Health (Mr. Elston), is to make a statute consistent with the charter. That is what we are doing.

Ms. Gigantes: You see a shopping list as one problem under the charter.

Hon. Mr. Scott: I see a shopping list as one problem.

Ms. Gigantes: Then it still exists in the other clauses. That is what I am saying.

Hon. Mr. Scott: No. The bill does not permit a shopping list.

Ms. Gigantes: The bill does not permit a shopping list when we talk about a spouse, but it does when the act still remains unamended as to the shopping list available on brothers or sisters or next of kin. I am wondering why you have not followed that concern through in total amendment.

Hon. Mr. Scott: That is not a charter case. I would prefer to defer that until Mr. Fram has reported.

Mr. Chairman: Mr. Warner was your supplementary to this point?

Mr. Warner: Yes, actually I want to make sure I understand the process. I am slightly confused about this.

If I understand what is being proposed, what I should do is ignore what is printed in the Mental Health Act, clause 1(j), and instead I should read what is on page 13 of the bill, with the exception of subclause 31(1)(j)(ii), in which case I should substitute what is on this piece of paper. Am I correct?

Hon. Mr. Scott: Right.

Mr. Warner: Then, by reading this over, should I also understand that these are qualifiers in order of importance, as I move from subclause 31(1)(j)(i) to (ii) to (iii), etc.?

Hon. Mr. Scott: Yes.

Mr. Warner: Am I right so far?

Hon. Mr. Scott: Yes. You are batting 1,000.

Mr. Chairman: Do you want to quit while you are ahead or do you want to keep on going?

Mr. Warner: I really should; I have one more question in this process, so I know exactly what I am doing.

Everything in here is very clear with respect to choice--if not (a), then (b); if not (b), then (c)--with the exception of the part about children; that is, subclause 31(1)(j)(iv), which says "any one of the children."

Hon. Mr. Scott: Yes. That is, as I understand it, Ms. Gigantes point, that in subclause 31(1)(j)(iv) and subclause 31(1)(j)(vi) we have deviated from the seniority list, by referring not to an individual closely defined, but to a class of individuals. She makes that point and I understand it.

Mr. Warner: Is it worth while to consider in subclause 31(1)(iv) and subclause 31(1)(vi)--that is the other one where there is no qualifier; it is any brother or sister, any child--

Hon. Mr. Scott: Let me suggest that you could respond to Ms. Gigantes problem by saying "the eldest child or, if not available, the second eldest child," etc.

Ms. Gigantes: Like the monarchy.

Hon. Mr. Scott: That would then have the sequence that Ms. Gigantes seems to desire.

Ms. Gigantes: I do not desire it. I would choose another way. I am just pointing out the problems with it this way.

Hon. Mr. Scott: All right. The problem with that is it launches another and probably unnecessarily elaborate inquiry as to which is the eldest child, because if the eldest child resisted, you then would not be able to go beyond.

Ms. Gigantes: True. That is a good thought. There might be a benefit to changing it.

Hon. Mr. Scott: I understand your basic thrust, which has nothing to do with this.

Ms. Gigantes: Nothing to do with what?

Hon. Mr. Scott: With this kind of process.

Ms. Gigantes: Yes, it has everything to do with it because I think what is laid out here is a process that does not make sense when you look at it in detail.

Hon. Mr. Scott: I understand that. You do not accept that what this amendment proposes is the right way to go.

Ms. Gigantes: I think we could do better.

Mr. Ward: I want to make one point. The Attorney General has enunciated clearly the charter impulse rationale behind the amendments that are in front of us. First, the amendment that is on the floor does deal with subclause 31(1)(j)(ii) of this and we are talking about subclause 31(1)(j)(iv) and subclause 31(1)(j)(vi), but leaving that aside, the reference to the committee on substitute decision-making which is currently exploring all aspects of the issue, and I think addressing the very concerns that you raised, has not yet rendered its report on these.

The committee includes good, balanced representation, such as the Canadian Civil Liberties Association, the patient advocate groups, Advocacy Resource Centre for the Handicapped and so on. When that report is available, obviously the ministry will take into very careful consideration any recommendations with respect to substitute decision-making. At that point, perhaps the kind of concerns you have with regard to qualitative rather than quantitative in this descending order of priorities can be addressed with their help and input at that time. At the moment, you are identifying a problem, but I am not hearing the solution.

Ms. Gigantes: There is. You just have to look a little further on.

Mr. Ward: I would much prefer to see what the advisory committee has to say on these things as well.

Ms. Gigantes: We will discuss my proposed solution when we get to it.

Mr. D. R. Cooke: Following along on Mr. Warner's reasoning, am I to understand that what we are dealing with on the floor reads "or (c) have together entered into a cohabitation agreement under section 56 of the Family Law Act, 1986"? Okay.

Mr. Chairman: Anything further on that? Are you ready for the motion on this amendment?

Ms. Gigantes: I hope my approval of this motion will not be taken to read that I think the problem is solved, because I do have an amendment that will attempt to substitute for this process.

Mr. Chairman: I think you have made that clear.

Hon. Mr. Scott: I intend to go all across the province saying that you have supported our amendments.

Mr. Chairman: Shall the amendment carry? Carried.

6:20 p.m.

Mr. Chairman: Ms. Gigantes, do you want to discuss at this point the order you are going to propose or are you prepared to move on to number 2 of the amendments? Will you speak to that please?

Hon. Mr. Scott: Number 2 of the amendments is in effect a repeal of the clause you have just dealt with. You can call the clause for a vote. If the clause is defeated, Ms. Gigantes has made her point and won.

Ms. Gigantes: I think we should skip it.

Mr. Chairman: You do not want to move on number 2 now?

Ms. Gigantes: If we move on number 2 without discussing the substantive proposal associated with it, we will not really be dealing with 2 at all.

Mr. Chairman: I follow what you are saying. What do you want to move to?

Ms. Gigantes: Can we leave that one aside, hold it?

Mr. Chairman: Yes, let us do that.

Hon. Mr. Scott: Then you are going to have to call the clause. If the clause is passed, you will not be able later to move its repeal.

Mr. Warner: Not necessarily. You can call the clauses at the end.

Ms. Gigantes: I am asking that it be tabled.

Mr. Polsinelli: For Ms. Gigantes to place her subsequent amendments, number 2 necessarily has to pass.

Ms. Gigantes: Yes.

Mr. Chairman: She argues with some validity that--

Mr. Polsinelli: We cannot discuss discuss your amendments until you have determined whether your number 2 is--

Hon. Mr. Scott: I suggest this rationale: if the clause is called and defeated, it will be defeated because the committee sees the merit of the package of amendments Ms. Gigantes has; and a preamble to the vote, in which she states in her usual concise fashion the issues her amendments present, will deal with it all.

Ms. Gigantes: No, I ask that our numbered page 2 be set aside until we have dealt with the substantive proposals I have for a substitute process.

Hon. Mr. Scott: Where? Suppose we pass those and then refuse to repeal clause 1(j) of the Mental Health Act?

Mr. Polsinelli: Why do you not outline the process, indicating all the amendments you have proposed, and then we will be voting on your process by voting on--

Ms. Gigantes: That was what I proposed in the first place.

Mr. Polsinelli: I am suggesting we will be voting on your process, if you convince the committee, by supporting your number 2 amendment. If this carries, you will know the committee favours the process you will have outlined. If this does not carry, we will effectively have dealt--

Ms. Gigantes: Then we are dealing with the matter subject by subject, which is what I proposed in the first place.

Hon. Mr. Scott: Then it turns out you were right.

Ms. Gigantes: Then let us proceed.

Hon. Mr. Scott: I should shut up.

Ms. Fish: Okay, I second that.

Mr. Chairman: Wait a minute. This is a historic occasion.

Hon. Mr. Scott: Never to be repeated.

Mr. Chairman: Ms. Fish may be, if I am reading her correctly, supporting the Attorney General on--

Ms. Fish: On his offer to shut up.

Hon. Mr. Scott: I asked for it.

Ms. Gigantes: It is going to take me a moment to get organized here. If I could turn the attention of the committee to page 47 of the proposed amendments to section 31 of the bill--

Mr. Polsinelli: Seriously, on a point of procedure, it is 6:24 p.m. We will be adjourning in six minutes and I wonder whether--

Ms. Gigantes: I am willing to start.

Mr. Polsinelli: --Ms. Gigantes would like to start today or perhaps have us handle it all in one fell swoop.

Ms. Gigantes: If we do not start, we will never finish it.

Hon. Mr. Scott: Six minutes of Ms. Gigantes is quite persuasive.

Mr. Chairman: Why do we not make the best use of our time? We are scheduled to 6:30 p.m. Let us do it. Ms. Gigantes, go ahead. Obviously, I cannot refuse a motion to adjourn.

Mr. Polsinelli: No, it was not a motion to adjourn. It was a simple suggestion.

Mr. Chairman: It was getting awfully close to a motion to adjourn. Ms. Gigantes has the floor.

Mr. Polsinelli: Wishful thinking, Mr. Chairman, on your part.

Mr. Chairman: I did not say that it was. I was clarifying the fact that it takes precedence over other motions. I am simply clearing the way, and we are debating it and losing all the six minutes we have.

Mr. O'Connor: Let us go.

Ms. Gigantes: I ask the indulgence, because it is an indulgence, of the committee in this complex matter, to turn to page 47. On that page I proposed a fairly long amendment, which I cannot put procedurally at this time but which proposes a whole new process of deciding who should give proxy consent for a patient. In essence, this proposal is that when a person enters a psychiatric facility as a patient, first of all, under my proposed clause 31(18)(2a), that patient would be asked, if competent, to declare which person should act as a proxy for the purposes of treatment if the patient became incompetent.

If the patient in the psychiatric facility is found from the outset not to be competent, then an application would be made to the review board, which is going to be reorganized under the amendments of the Attorney General--and which I hope will be able to operate more smoothly; I believe what is being suggested is probably an improvement--and the review board would make a decision, with the assistance of legal aid, about which person should be designated to make proxy consent.

The purpose of the amendment is twofold. It gets us around the difficulties we have seen when we looked at the whole process we have been using up to now in deciding who gives consent for treatment. It is a very serious matter and it spells out another method.

That method, first, would be the choice of a competent patient. The patient himself or herself would decide whether it was family, a spouse, a friend--who it would be if the patient were deemed incapable of making treatment decisions. Second, in a situation where the patient had not been able to do that while competent, it lays out a process that, if there were no person found through the review board process, would end up with the official guardian being able to make a decision.

The purpose of the amendment is really to get away from the notion that family in descending order of closeness of line or association, spousal, marital or whatever, are necessarily the people whom a patient, while competent, would wish to make decisions about treatment. In most cases this process would produce a decision that the spouse would be the designated person. In most cases a competent patient in a psychiatric facility would choose a spouse and say to the psychiatrist or the official in charge, "That is the person I wish to designate."

In cases where the person, because of incompetence, was not able to designate the proxy, this process would take into account whatever unusual kinds of circumstances might surround the care and treatment of this person. For example, in such an application, if the patient were a woman whose spouse had abused her, this would be a way of assuring through an existing structure, a review board, that the spouse was not given the duty and responsibility of making proxy consent decisions on treatment.

This is what I would propose as our substitute method of dealing with substitute consent. I understand the argument that is put forward: We have a committee that is looking at it. I suggest very strongly that the whole area of proxy consent-making has raised a good deal of concern. I think it would bother a lot of health professionals in many cases to feel that their treatment consents were being given by people who might not have the best interests of the patient truly at heart.

I know we have a committee dealing with the subject, and it just seems to me that the process I am proposing here is a pretty straightforward one that fits within the context of mechanisms that have already been developed in association with the Mental Health Act. I look forward to discussion on the proposal, and I am certainly prepared to answer any questions people have about it.

Hon. Mr. Scott: I can put our position in one sentence, and then I guess it will be 6:30 p.m. Our position is that this is a laudable effort to get at the problem, which is the problem of finding the best person to make a decision in situations where the best person will vary from case to case.

The problem is that who is the best person is not something that is likely to be known in the difficult cases with which hospitals are going to have to deal. While the intention to find the best person is desirable, even under your amendment, at the end the doctor ends up making a subjective judgement about who is the most suitable person, which is to leave the question right there.

The effort should not be discouraged, but it is an effort of such

enormous complexity that when we have an expert committee made up of representatives of patients, consumers, hospitals, doctors and every other interest working on it by meeting once a week to review the possibilities, it would be a mistake to foreclose their discussion by simply saying, "This is the way we are going to do it." That is why we have experts and why consumers, hospitals and doctors are meeting to try to resolve this.

Ms. Gigantes: Are there patients on that committee?

Hon. Mr. Scott: Advocacy Resource Centre for the Handicapped is on the committee.

Ms. Gigantes: It is not a patient.

Hon. Mr. Scott: No, but ARCH is an advocacy group for patients.

Ms. Gigantes: I just want to make sure we are always talking about patients in the right way.

Hon. Mr. Scott: I am sorry. I do not regard the word "patient" as offensive. I want to make that clear.

Ms. Gigantes: It does entail very frequently a reduction in rights.

Hon. Mr. Scott: It is probably 19th century to regard the word "patient" as pejorative.

Ms. Gigantes: If we amend our legislation so that patients have as many rights as anyone else, of course it would not be. It is a restriction of right to be called a patient.

Hon. Mr. Scott: The aged, the senile and children do not have as many rights as everybody else, but to call someone a child is not to be pejorative. It is to describe a state.

Mr. Chairman: Having said that--

Hon. Mr. Scott: On that note, as we say.

Mr. Chairman: --and recognizing that the clock has now exceeded the allotted hour and that we have no authority to sit beyond 6:30, I will call for a motion to adjourn. I thank you all.

Could I just bring to your attention that an insertion for page 17 has been made by the clerk.

The committee adjourned at 6:34 p.m.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT

MONDAY, JUNE 2, 1986

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Mellor, L.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

From the Ministry of Health:

Ward, C. C., Parliamentary Assistant to the Minister of Health (Wentworth North L)

Sharpe, G., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 2, 1986

The committee met at 4:20 p.m. in committee room 2.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

The Vice-Chairman: Ladies and gentlemen, could we call ourselves to order? We are starting a little later than usual today, but part of the reason is that we have some additional material in front of us by way of amendment. At the outset of the meeting I would like to walk the members through the material you have to be certain we all clearly understand what we are doing today.

4:20 p.m.

First and perhaps easiest, if I could ask for some order, would be to look at the package of material date-stamped June 2 and deals with section 31. There are several motions in the name of Ms. Gigantes and she has very clearly marked at the bottom of each page which numbered motions these replace. If you are working as you should be from the master package of amendments distributed May 26, we are, for example, beginning our consideration today with the second of those motions standing in the name of Ms. Gigantes dealing with section 31.

Ms. Gigantes has circulated what I think is a revised wording--I have not looked at that carefully enough--but in any event, it replaces motion 2 which was previously circulated on May 26. Each of the items in that package similarly notes at the bottom which motion is to be replaced. As you are shuffling your paper, be mindful of that.

There are three additional government amendments in front of us. Take a moment while you find your way through the package from Ms. Gigantes, and at the same time, I can review briefly the three government motions, because you will have to place them in order of the amendments as well. Let me just go over those three motions. You might find it easier to put them in order.

There are three loose pages on your desk that are government amendments to the bill. They are headed in the upper right-hand corner, respectively, 15a which follows 15, 57a following 57, and 62 which replaces the previous government amendment numbered 62 in your package.

Mr. Polsinelli: Perhaps Ms. Gigantes could give us some direction on 15.

The Vice-Chairman: Ms. Gigantes, Mr. Polsinelli is asking about 15. I can turn to that as well.

Ms. Gigantes: What is the question?

Mr. Polsinelli: These seven pages indicate that it replaces motion 15 in part. What part? Is it an addition or a substitution?

Ms. Gigantes: It is a replacement, a substitution, and it goes with others.

The Vice-Chairman: Perhaps I can assist. There are several separate motions that have 15 on them and note that they replace the original 15 in part.

Ms. Gigantes: Why are his amendments loose?

The Vice-Chairman: Because he just took them apart. They should have been all together in an elastic band.

Mr. Polsinelli: I remove your previous 15 and insert these seven pages?

Ms. Gigantes: No. Somehow you have taken them apart.

Mr. Polsinelli: They were given to me--

Ms. Gigantes: The package is complete. The package of my motions which you were given today is complete, so you will not have to remove anything.

Mr. Polsinelli: I am just substituting--

Ms. Gigantes: We have two complete packages. One is supposed to be the motions of the Attorney General (Mr. Scott) to which we have just added three new pages.

Mr. Polsinelli: These two?

Ms. Gigantes: Yes. We also had the package before that incorporated both my motions and the motions of the Attorney General.

Mr. Polsinelli: What I am doing is substituting your amendments into the previous package.

Ms. Gigantes: Then you will have to substitute more than one, because you will notice in the new package you have received on my behalf that there is more than one motion dealing with what had been 15.

The Vice-Chairman: If I may, I think what Mr. Polsinelli was asking about the several pages that indicate at the bottom, "replaces motion 15 in part." He was simply asking if he should, in effect, turn away from the original motion 15 and read those several pages together. I believe that is correct.

Mr. Polsinelli: That is correct. Thank you for your assistance.

Mr. D. R. Cooke: Regarding this document, I found in following all my new 15s, that it does not say what it is. It is section 31, Ms. Gigantes proposing--

The Vice-Chairman: It reads 15 at the top? It is the very last that reads 15 at the top circle?

Mr. D. R. Cooke: I think so. Is that another replacing 15 in part?

The Vice-Chairman: That is also replacing the former motion 15 in part. It is the last in a series. Ms. Gigantes had some handwritten corrections and I believe you will agree that replaces the former motion 15 in part.

Ms. Gigantes: Mine are all loose. They are not bound, right?

The Vice-Chairman: No.

I will be careful, as we go through, to ensure that everyone is dealing with the same piece of paper and therefore the same amendment so that we do not have any confusion over that. We ask the indulgence of those who are here to watch the proceedings today as we try to order our business to proceed in a sensible manner.

Do we have any further questions of an organizational nature at this point? May we proceed to substance?

Ms. Gigantes, you have the floor. We are dealing with motion 2.

Ms. Gigantes: We have dealt with this motion by looking at the motion to which it refers with respect to what my amendment would try to do to provide a process for a patient to designate a person to make treatment decisions. The motion I am trying to present as the substitute is to be found on the numbered 47 and you will find, in the new package, it says at the bottom, "replaces motion 47." It is near the end of the new package.

I had outlined the process which is quite a simple one. The competent patient is invited by the physician to designate the person of choice of the patient to act on his or her behalf in case incompetence arises. If the patient does not, or cannot, designate, the matter would then be referred, if the patient were deemed to be incompetent, for a hearing to the review board for a decision.

I would like to briefly mention the reasons I think that is so important. If we look at page 13 of Bill 7, we are still dealing with the designation of a proxy consent which includes a spouse, who may not have been in a relationship of love and trust with the patient. Second, if you look at subclause 31(j)(iii) of the Mental Health Act, we are also dealing with, as the third in our list of substitute consent parties, "a person to whom the person is married while living separate and apart," so we are talking about an estranged spouse.

4:30 p.m.

When the review board is called upon to designate for an incompetent person who has not designated his or her own consent party while competent, it would look quite naturally at family members to provide the proxy consent. I would like to suggest that, at this stage, we should recognize that the existing listing we have in section 31 of the people who should be called upon, in order, should certainly not, as number three, include an estranged spouse.

To get around the fact that in different situations, different people with different relationships to the patient will be those who can most accurately and fairly represent his or her wishes when competent, we propose

this substitute motion, which now replaces motion 47. On those grounds we should be looking at the government motion we passed earlier--the first motion we dealt with--and considering the numbered motion up for debate right now, which replaces motion 2. We should get into a new process of consent.

We know the matter is under study by committee, but we can tell that the existing process is not the best process. The review board has acted on behalf of patients. This process would allow it to take into consideration the particular circumstances in which proxy consents were signed.

The Acting Chairman (Mr. O'Connor): Is there anyone else on the list to speak to this?

Ms. Gigantes: The motion we are dealing with right now was on the floor when we last adjourned. It is in the large package called number 2, the top motion in the new package.

The Acting Chairman: If there is no one else who wishes to speak on the matter, shall I call the motion?

Mr. Partington: Yes.

The Acting Chairman: Are we all clear about the motion on which we are voting? Page 47.

Ms. Gigantes: No, we are not voting on that. We are voting on number 2. The reason for this is to develop a new mechanism which would become the replacement for motion 47. Otherwise, we are leaving things the way they were.

Mr. Ward: As was indicated last week, there is a committee that is representative of various groups having an interest in these matters. I believe that to adopt this recommendation precludes the deliberations of that committee.

Ms. Gigantes: If my motion fails today, how long is it going to be before we see a change from the situation where an estranged spouse, or a spouse whose relationship with a patient may not be one of love and trust, has the authority to give consent?

Mr. Ward: I want to reiterate--and the Attorney General put it succinctly last week--that the catalyst for these amendments was to bring the legislation in conformity with the Charter of Rights.

If you are asking for a time frame, or expecting that committee to report over the summer, it is our intent to bring in legislation, perhaps in the next session, for amendments to the Mental Health Act as a result of those deliberations.

Hon. Mr. Scott: If I can add some further precision, we understand that the report will be available during the summer.

Ms. Gigantes: Do you expect to take action on the report?

Hon. Mr. Scott: I have not reviewed that question, because I have not seen the report. I will want to assess what the report says, and draw some conclusions as to whether whatever proposal it makes is an appropriate one. I will also, of course, want to consult with the Minister of Health (Mr. Elston).

Ms. Gigantes: I wonder about the implications of this whole area for the charter. It seems to me that if I am an incompetent patient and the person who is making the choices about my treatment is somebody I would not wish to have acting as my proxy, I am not getting the same benefit of the law as a person who has somebody trustworthy and loving.

Hon. Mr. Scott: We have indicated that we share your concerns; but the proposal now before us is to remove the existing mechanisms and replace them with an entirely new mechanism and, therefore, to foreclose, at least for the time being, the kind of considerations the Attorney General's committee has been giving this whole area of substitute decision-making. I recognize your concern to do that, but it would be unreasonable, if I may say so, to do it when the report is so imminent.

Ms. Gigantes: We are looking at a period which may be six months or longer before we get to an amendment of the existing mechanism. It seems to me we are not foreclosing anything. For a short period at least, we would ensure that the problems I see with our current method of designating proxy would not arise.

Hon. Mr. Scott: The committee has the advantage, which we do not, of having representatives from all the interest groups involved in this large and important field. I hope and believe they have been considering all the reasonable alternatives. I know the honourable member would feel very badly if, in an urge to improve the law, we instituted a scheme today the committee judged to be the worst of the possibilities--

Ms. Gigantes: It could be changed just as easily as this could be changed.

Hon. Mr. Scott: --or, indeed, even worse than the present possibility. You know how difficult it has been to get here. We have been 11 months waiting to--

Ms. Gigantes: That is why I wonder how long we will be operating with the present scheme which, as you know, I find quite objectionable.

The Vice-Chairman: I have no further speakers on the list. Are there further speakers? If not, we will move to the motion. Are you clear on the amendment or do you require it read? I will take it that the committee is clear.

All those in favour of the amendment by Ms. Gigantes? Opposed?

Motion negatived.

The Vice-Chairman: We will move to subsection 31(1), the question being put on clause 1(j) of the Mental Health Act, as amended. Does that carry? All those in favour? Opposed?

Ms. Gigantes: Are we looking at 3? I believe it is clause 1(r), is it not?

The Vice-Chairman: I am directed by the clerk that we are looking at page 13, section 31 of the bill dealing with clause (1)(j) of the act.

Interjection: As amended.

The Vice-Chairman: Let us try that again, shall we?

Ms. Gigantes: That is the one we do not want.

The Vice-Chairman: If you are following the bill, it is page 13, dealing with clause (1)(j), which was previously amended, colleagues.

Shall that clause, as amended, carry? All those in favour? Opposed?

Motion agreed to.

The Vice-Chairman: We will move then to motion 3. We are now on motion 3 of your package of May 26. It is a government motion dealing with subsection 31(1a). The note on the bottom indicates it is housekeeping.

Members of the committee, this motion relates directly to motion 17 in the package which deals with subsection 31(3e). We can do this in a couple of ways. If you adopt motion 17, then you will want to adopt motion 3. If you do not adopt motion 17--

Hon. Mr. Scott: I suggest that motions 3, 5 and 9 ahead of us--we are on motion 3 now--are ancillary to the creation of a central review board which is what 17 deals with.

4:40 p.m.

The Vice-Chairman: I was about to suggest, in the light of that, that we move to 17 and come back, or was it a--

Hon. Mr. Scott: Or we can do them in order. It might be easier to do them in order with the undertaking to come back to them if 17 is rejected. In that way, we will not--

The Vice-Chairman: Is it the committee's wish that we follow in order, returning if we find ourselves in a logical impossibility?

Ms. Gigantes: That is the procedure we have followed so far.

The Vice-Chairman: All right. That is the way we will proceed. Mr. Polsinelli, do you disagree?

Mr. Polsinelli: No, I agree. I want to point out that the discussion at the last meeting was that Ms. Gigantes's amendments are not voted on as a package but discussed as a package. If motion 2 had failed, effectively the balance of the package would have been deemed to have failed because the committee obviously was not going to accept it.

Ms. Gigantes: I am certainly not going to waste your time.

Mr. Polsinelli: When we get to them, we can just remove them.

The Vice-Chairman: With all those comments, is the committee ready to deal with motion 3? Are we agreeable?

Are there any speakers? Does anyone require the motion to be read? All those in favour? Opposed? That motion carries.

Motion agreed to.

The Vice-Chairman: Motion 4 is put by Ms. Gigantes.

Ms. Gigantes: This is in the new package which says on the second leaf "replaces motion 4." It is the same wording in a more logical format, thanks to help from legislative counsel.

The Vice-Chairman: Is everyone clear?

Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(1a) Clause 1(t) of the said act is repealed and the following substituted therefor:

"(t) 'restrain' means keep under control when necessary to prevent serious bodily harm to the patient or to another person by the minimal use of such force or mechanical means as is reasonable having regard to the physical and mental condition of the patient."

Ms. Gigantes: The members of the committee will be aware that part of the large significance of that is it would remove chemical restraint. Part of the reason for my interest in this matter is that much of the testimony we have heard from psychiatrists, from the Ontario Hospital Association and from advocates on behalf of psychiatric patients has indicated that there is, in practice, or at least in the view of treating professionals, a fair amount of overlap between restraint and treatment.

It is my concern that, as far as it is possible for us to do so, we want to ensure that in the minds of the people involved in the clinical setting, and also in the minds of the patients involved, there should be a differentiation between restraint and treatment. In the use of chemical restraint, the overlap tends to be very significant in the minds of all concerned. It is my hope that we could say that restraint is as we have known it historically, which is a brief period in which the patient is held, physically restrained, so damage will not be done to the patient and damage will not be done to another person.

The implications of this in a clinical setting are probably pretty profound. We all know the number of injuries that occur to staff in the clinical setting, both in cases where restraint has not been applied in an apprehensive way and when there is an attempt to put a patient under restraint. If this motion were to pass, the implications in a clinical setting would be that we would have to provide a more adequate level of care and a greater level of staffing. In that sense, it is quite a profound amendment.

The other thing I will mention in passing--and perhaps I should not say "in passing"; you will direct me, Madam Chairman--is that I am worried about the use, even in the amendment I have put forward, of the phrase "'restrain' means keep under control." "Keep" seems to imply a long period. I am concerned that we not look upon restraint as something that goes on long-term. Treatment goes on long-term, and restraint should be used only in exceptional circumstances.

I want to amend my amendment and suggest we replace the word "keep" with the word "place." I do not know if that will strike a responsive or a significant note in many minds, but to my mind it does.

The Vice-Chairman: Are you directing your query to legislative counsel or to the Attorney General?

Ms. Gigantes: To you. I would like to amend my amendment.

Interjection: If it is a friendly amendment.

Ms. Gigantes: Oh, it is a friendly amendment.

Interjection: Do you accept your own amendment?

Ms. Gigantes: I do.

The Vice-Chairman: I may have been using a little bit of licence here, but my copy of your amended version, replacing motion 4, already had "place" instead of "keep."

Ms. Gigantes: I scribbled it in, and had not formulated it properly.

The Vice-Chairman: I presumed that was the intended amendment.

Ms. Gigantes: I should not have read it as I did. I should have read it as "'restrain' means place under control."

The Vice-Chairman: On your behalf, committee, I am prepared to rule that Ms. Gigantes made an error in reading her motion in the first instance. She intended to read her motion as "'restrain' means place under control," etc. Is the committee agreeable to that?

Agreed to.

Ms. Gigantes: Thank you very much.

The Vice-Chairman: Are there any further speakers on this matter?

Mr. Polsinelli: As Ms. Gigantes has pointed out, this is a profound amendment. It deals substantively with the Mental Health Act and what "restrain" means. In my own mind, I am not quite sure whether it deals only with the physical restraint of the person or whether it deals with treatment. A number of the psychologists we had before us did indicate that there was some overlap between the two. This is one of the items I would just as soon leave with the committee reviewing the Mental Health Act and wait for it to come back with recommendations.

Ms. Gigantes: They are not reviewing the whole act.

Mr. Polsinelli: Perhaps it is something the committee should take under advisement, but it does not seem to be the type of item that should be dealt with in this omnibus bill relating to section 15 of the Charter of Rights.

The Vice-Chairman: Mr. Ward, you wanted to speak to the differences in language.

Mr. Ward: Yes. We have no objections to inserting the words "when necessary to prevent serious bodily harm to the patient or to another person," which is obviously wording that may strengthen the legislation and make it clearer. We are definitely opposed, however, to the suggestion inherent in the

amendment that would remove the ability of those working in psychiatric hospitals to use tranquillizers or chemical means as methods of restraint. Your amendment says "mechanical means" which I assume precludes chemical means, as per your original amendment.

Ms. Gigantes: Yes, that is the intent.

4:50 p.m.

Mr. Ward: First, we must take into account the issues raised as recently as last Thursday in the Legislature with regard to injuries taking place. Second, I really think this is an area that has an impact in terms of the clinical treatment available in these facilities, and is far too restrictive in terms of those who employ whatever methods they feel are appropriate for restraint.

Mr. Partington: I also want to express my opposition to the amendment. Substantially, on the deletion of the chemical treatment, we heard evidence from professionals that such a step would be regressive. It would take psychiatric treatment back 200 years. From what I have heard, I understand the need to have chemical treatment. Because of that, we will be ruling against this.

Ms. Gigantes: Chemical restraint.

Mr. Partington: Yes. Chemical restraint.

Mr. Warner: There are a couple of issues connected with the amendment that bother me. My colleague has addressed one of them quite eloquently a couple of times, and in a sense it is not even touched by the amendment; that is, trying to draw a distinction between restraint treatment and having it duly noted by record keeping.

Whether this amendment fails or stands, I hope there will be an undertaking by the Ministry of Health to ensure proper record keeping, and I say "proper" in terms of trying to differentiate wherever possible what methods are being employed for the purpose of restraining a patient where the patient has become uncontrolled and uncontrollable and what is being used for treatment purpose. That is an important distinction, which is not actually touched on by the amendment. There is an implication to that.

It has become clear--certainly to me and I hope to other members of the committee--that the reports we have had about the incidence of abuse on staff are very disturbing. The staff in many of our institutions are at great risk daily, regularly. The injuries reported are very high. I do not think you can simply say it has to do with the measure of control over the patient. I suspect we are understaffed in a lot of cases. That is a chronic condition that has existed. Perhaps further staff training is required, but we do know we have staff who are at risk and they deserve support. If the ministry has to provide more staff or better training, that is what it has to do.

The previous government had systematically cut back everywhere in the health care field for 10 years. We are painfully aware of that. I am not suggesting for a moment that you can overturn that 10 years of neglect in a year or two, or three for that matter, because some of it is deep-rooted. But you have to start somewhere. In this instance, we know we have staff under a tremendous amount of stress and they need protection and help.

Finally, if the amendment fails, I urge that the minister undertake to make sure there is a proper accounting and some definition--personally as a member of the committee I would appreciate knowing the definition that is used in our hospitals to differentiate between restraint and treatment. That is important for staff and patients to understand. It is just as important for legislators to understand what the difference is.

There are concerns about restraint of any sort and there are always concerns when we incarcerate people about how they are being treated. There are concerns about how patients are treated and what form of control is being exercised. Is it humane? Is it for the purpose that it was set out? We assume it is not vindictive. It is not a punishment. These are patients, not criminals. Is the form of restraint a humane one, and is it appropriate to the situation?

I think the professionals have told us that in some situations chemical restraint is appropriate. That is their opinion, and that is certainly worth considering.

Ms. Gigantes: I have just one final comment on the amendment.

My concern is that a person who is in a hospital, either as a competent patient or an incompetent patient, can be restrained. There is no consent needed for that--either by the patient if competent, or by a proxy if the patient is incompetent--as there is with treatment. We do not have any method right now of making a clear distinction between restraint and treatment. It is not something the patient has a right to have reviewed in any section of our legislation.

We have to look upon the period of restraint as a very special period. For that reason, I would argue that chemicals should not be used. If a person is placed under restraint by the use of chemicals, the person has no right to have that reviewed.

Hon. Mr. Scott: May I just oppose this? I do so with some sympathy for its intent, but I think its purpose is to do indirectly what we cannot satisfactorily get a handle on doing directly.

The thrust of this is, I take it, not an attack on chemical treatment, because chemical treatment is used therapeutically. It is not an attack on the use of chemicals. It is rather an effort to indirectly define restraint. Ms. Gigantes has made it plain--and I understand this--that she is concerned about restraint being used when perhaps treatment should be used.

Not being able to devise an appropriate and meaningful definition of when restraint should or can be used, we simply limit the armoury of remedies when restraint is required to make the doctor think twice. The doctor wants to use a chemical because it is the treatment or approach of choice. In order to do so, therefore, he regards it as treatment and obtains the consent of the proxy, or whatever is required.

I think that is an unfortunate way of doing it. If the intent is to try to define restraint, we should try to do that directly, and not reduce the armoury of responses when a real restraint situation exists. If we do not use chemicals in restraint, we will be into the straitjacket again. Therefore, I oppose the motion, because I think it is an improper response in those cases where restraint is appropriate.

5 p.m.

If it be the desire of anybody to define restraint, I will watch very carefully for the definition. I think it will be next to impossible to do. I am sure that, in most cases, what begins as restraint becomes treatment.

No doctor seeking to treat a patient, but having to restrain him, would use as a restraint technique something inimical to the treatment which is to follow. They overlap so considerably, one being almost the precondition of the other, that the attempt to define them is probably hopeless. In the end, we will have to rely on the professional judgement of doctors to define it in practice.

The Vice-Chairman: All those in favour of Ms. Gigantes's amendment? Opposed?

Motion negatived.

Ms. Gigantes: Since the motion has failed, I wonder whether I could put a similar motion to the existing clause 31(1)(t) to say that "restrain" means to "place under control." It would substitute the word "place" for the word "keep" in the first line of clause 31(1)(t).

The Vice-Chairman: That motion, that specific and narrow amendment, has not been put because while Ms. Gigantes made that replacement, it was within the context of her broader amendment.

Ms. Gigantes: I am talking about the act.

The Vice-Chairman: Ms. Gigantes moves that in clause 31(1)(t) of the act, the word "place" be inserted instead of the word "keep" and the phrase restraint means "place under control."

Mr. O'Connor: I have a question of Ms. Gigantes or perhaps the representative of the Ministry of Health, Mr. Ward.

Inasmuch as there is now no automatic review of someone who is placed under control by mechanical or chemical means, would the changing of the words, therefore, have no effect at all? Would it not be the same thing to say "keep under control" or "place under control," because there is no review of that situation in any event? To place under control without the review would mean and have the effect of keeping that person under control for as long as the doctor saw fit. Although I have some sympathy for the amendment and might be prepared to vote for it, I suggest there is really no effect to that change. Am I correct in that assumption?

Hon. Mr. Scott: Theoretically, if you use the word "place," you could say, notionally at least although it would be difficult, that the placement of the patient under control had now terminated and, if he continued to be controlled, he was being illicitly treated. In other words, theoretically, if he was placed under control at midnight on Sunday night and was maintained under control for two days, at some point in that spectrum someone might say that the placing under control, which was not reviewable, had ceased. You would now be doing something other than placing the patient under control. You would be maintaining him under control, and in so far as you were doing so, you would be illicitly treating him.

Mr. O'Connor: On the other hand, the wording as it exists, to keep

under control, implies no termination. It is indefinite. Is that not an evil we should be attempting to guard against? The more moderate wording suggested by the amendment might be more acceptable in the light of the Charter of Rights and the spirit of this act.

Hon. Mr. Scott: We have no trouble with the amendment.

The Vice-Chairman: The advice was that the government has no difficulty with the amendment.

Mr. Partington: There was some evidence that there were situations where the necessity to control could go on as long as three days. Perhaps we need both "place" and "keep." I sympathize with the suggestion, but I think "keep" would suffice.

Mr. Ward: As I indicated at the outset, I do not have your most up-to-date motion, but your original motion included the words "when necessary to prevent serious bodily harm to the patient or to another person." That was seen as strengthening the wording of the legislation and it does at least define the period of--

Interjections.

The Vice-Chairman: Order, please. On behalf of the committee and the chair, I now have some confusion. Mr. Ward, are you suggesting that Ms. Gigantes's most recent amendment would be more acceptable if she reverted to her original amendment that was just defeated?

Mr. Ward: No. Her original amendment deleted "mechanical means or chemicals," substituting therefor "or mechanical means."

Ms. Gigantes: Then why not put "or chemicals" back in the original amendment?

The Vice-Chairman: Hold it. I have a speakers' list. I will go to Mr. Cooke.

Mr. D. R. Cooke: I like the amendment. I am wondering whether Ms. Gigantes, a representative of the Ministry of Health, the Attorney General (Mr. Scott) or Mr. Partington has some examples of where the word "keep" was used. Mr. Partington suggested he knew of situations.

Mr. Partington: We heard in the evidence, for example, that someone was screaming for three days. There may be situations where you have someone who does repeated dangerous acts and, therefore, the keeping or the placing under control, whatever you want to call it, may require two or three days. If you use the word "place," then perhaps you deal with that person immediately in the first act by discharging him. He then becomes very dangerous to society because you used the word "place" instead of the word "keep."

Mr. D. R. Cooke: Does Ms. Gigantes have any examples to the contrary, where the word "keep" was abused?

Ms. Gigantes: We heard from both the advocates and the psychiatrists who appeared before us that there is an overlap in the minds of the treaters and the treatees between restraint and treatment. It is a distinction that is worth trying to clarify. What Mr. Ward has suggested makes eminent good sense to me: that we look again at my amendment that we just defeated. Instead of

going through this amendment I have just proposed, we could add "or chemicals" to the previous amendment. This has the benefit of having the clarifying phrases that he referred to as being reasonable.

Hon. Mr. Scott: You have to put in "place" too.

Ms. Gigantes: Yes. That is already in.

Mr. Ward: It seems a relatively simple exercise to go with your original amendment, in that it added "when necessary to prevent serious bodily harm to the patient or to another person" immediately following the word "control." There is also the insertion, if you so wish, of the word "place." At that point the amendment is complete.

Mr. Polsinelli: I am having a bit of difficulty understanding the difference between "restraint" and "treatment." The discussion has highlighted that for me. The particular difficulty I am having is understanding whether a physician would be able to keep a patient restrained by chemical means for, say, a week, while at the same time administering another drug that would aid in the treatment, if the physician felt the restraint was necessary for the other drug to take effect. I do not know; I am not a psychiatrist or a physician, but I wonder whether we should be treading on what seems to be dangerous ground without seeking the advice of professionals. That is a question I would direct to our representative from the Ministry of Health or perhaps even the Attorney General.

Hon. Mr. Scott: If your purpose, and I take this to be Ms. Gigantes's purpose, is to narrow the scope for restraint--

Ms. Gigantes: Clarify.

Hon. Mr. Scott: All right, but I think narrow in the sense of restraint. More treatment and less restraint, as far as is consistent with therapy.

Ms. Gigantes: Not only that, but to provide clarity.

5:10 p.m.

Hon. Mr. Scott: Yes. It seems to me the way to do that is to use the word "place" and remember that we are talking about placing under control.

The section will then say "place under control." That is what restraint is. Then put in the words of motive or purpose, "when necessary to prevent serious bodily harm." That will impede the prospect, for example, if a patient refuses a treatment and is kept under control, in the light of his refusal, by being put alone in a locked room. That is the kind of misutilization of restraint that Ms. Gigantes may be concerned about, rather than the restraint we talk about at the door of the hospital when the patient is acting out.

Ms. Gigantes: Precisely.

Hon. Mr. Scott: If you use the word "place" and then put in the words of motive, any doctor who seeks to use the restraint section to encourage a patient to submit to a course of treatment that the patient objects to will not be able to do so because the doctor would not be able to show the motive "to prevent serious bodily harm to the patient or to another person."

Ms. Gigantes: That is correct.

Mr. Polsinelli: What if the restraint is necessary and ancillary to another treatment that the physician or psychiatrist may feel is necessary? I am speculating that may be the case. I do not know whether he might.

Hon. Mr. Scott: That is precisely Ms. Gigantes's point. There is a choice to be made by all of us about the treatments we will undergo. There are many doctors who will think the treatment they have in mind for me, especially this month, is the most efficacious that can be devised in the public interest. However, if I do not want to undergo it, there is no reason I should be required to if I have any powers of self-possession at all.

I take it to be Ms. Gigantes's view, with which I agree, that the restraining mechanism should not be utilized in aid of adopting a particular treatment course. In other words, Mr. Polsinelli, I am entitled to restrain you because you have arrived at the hospital about to injure yourself or others. I will restrain you for that purpose. Now I have selected a therapeutic course for you.

Mr. Polsinelli: I understand the distinction. If that is the only distinction, then I agree with the amendment. I just wonder whether that is the only distinction. I am unsure.

Hon. Mr. Scott: Then that is not a question. That is something to satisfy yourself about.

The Vice-Chairman: Are there any other speakers on this matter?

Ms. Gigantes: May I ask what we are dealing with?

The Vice-Chairman: We are dealing with the limited amendment you moved, to replace the word "keep" with the word "place" in clause 1(t) of the Mental Health Act, as amended in section 31 of the bill.

Ms. Gigantes: May I amend that so that we follow the course suggested to us by Mr. Ward? That is, we take the original amendment that replaced motion 4, so that clause 1(t) would begin, "'restrain' means place under control when necessary to prevent serious bodily harm to the patient or to another person."

The Vice-Chairman: Give me a second. Members of the committee, if we could come back to a single meeting I will try to share with you the understanding at the head of the table about the amendment. The amendment is to clause 1(t) of the Mental Health Act. That is all we are dealing with.

The amendment is to strike out "keep under control" in the first line and insert in lieu thereof "place under control when necessary to prevent serious bodily harm to the patient or to another person."

Ms. Gigantes: That is it.

The Vice-Chairman: I do not want to deal with understandings, substitutions or otherwise. I simply want to deal with the amendment that I understand you have put.

Mr. O'Connor: I assume we can speak on this. It is a new amendment to the one I thought we were talking about.

The Vice-Chairman: Yes, I will take a new speakers' list.

Mr. O'Connor: I simply point out that what has just been proposed is a limitation. I cannot go along with that, because there are other reasons restraint is used.

We heard evidence from Dr. Hoffman and from the Ontario Hospital Association, I believe--I am not sure on that point--that reasons other than the prevention of serious bodily harm occur when the patient might be screaming all night, might be disruptive through actions which do not cause him or other people physical harm but are totally disruptive of a hospital ward or a hospital setting.

We have to leave it to the discretion of the doctors in this regard to determine when restraint is necessary and in the best interests of the patient and those around him. That restriction goes too far. I am prepared, as I indicated earlier, to support an amendment which would replace the word "keep" with the word "place" in clause 1(t), but to go no further than that.

Ms. Gigantes: In response to what Mr. O'Connor has said, I agree with him; that is part of the presentation that was made to us. When you get to a screaming patient, you are looking at treatment, not restraint. What is making the patient scream? That is something either treatable or not treatable, but restraint per se is not going to treat it.

Mr. Warner: The members of the committee are aware that the proposal put forward by my colleague is entirely in keeping with the spirit of the Charter of Rights. That is what we are about; that is the exercise we are engaged in.

I think it is a very useful amendment. There is no point in going over the arguments again, but replacing the word "keep" with the word "place" is helpful. It does suggest that you cannot do this indefinitely.

The moment you restrain any individual, whether it is in a hospital setting or wherever, you are, in a sense, suspending certain liberties. It is that suspension of liberties to which the charter addresses itself. That is what we are attempting to do: to bring things in line with the charter. The helpful suggestion put forward by my colleague is entirely in keeping with that spirit. I do not think for a moment that it interferes with the treatment of patients. We are dealing entirely with restraint, which is connected with removing a liberty.

Why are we doing it? We are defining why we are doing it: to prevent serious harm to the patient or to someone else--meaning staff, usually.

How are we doing it? "By the minimal use of such force," etc., and having due regard for the patient, which is already in the act. We are defining it and making it clearer, but we are also addressing the very spirit of the charter, which is why we are here this afternoon.

5:20 p.m.

Mr. Partington: This conversation seems to support the reason for having many of these decisions dealt with by the committee. We are dealing with patients' rights and the ability of psychiatrists and hospitals to deliver health care, and we are now talking about the difference between the word "keep" and the word "place." Although it may seem small, I think it has

substantial repercussions. Under the circumstances, for the reasons we talked about--a need for a continuum of control, albeit perhaps a short one--I did not hear evidence of great wrongdoings with respect to the restraint process during the hearings and I would support leaving this legislation as it is.

Mr. Callahan: Going back to the phraseology of "place" and "keep," if we replace "keep" by "place" we might find that medical practitioners will give a larger dose of whatever that chemical is to cause that reaction, whereas with "keep" a mild sedative might keep this person comfortable and keep him from doing what my colleague suggests. The other patients also have rights and if this place is going to be bedlam, it is not going to be to the advantage of the other patients. I cannot support changing the wording. If it is to be done, it should be done by the committee that is reviewing the entire act. If you start tinkering with specific words here, there and everywhere, you may wind up in a situation where witnesses in the determination of this other act may make you want to go back to the word "keep."

It puts a heavier onus on the doctor. This is going to govern or could be determinative of issues of his liability or lack of liability for whatever judgement he makes. We would make a mistake by changing it at this point.

Mr. Ward: The last two speakers have both made reference to the committee. The committee that is having its discussions and deliberations now is the committee on substitute decision-making. It deals only with proxies; it has nothing to do with this aspect of the bill and will not be making a recommendation in regard to this. I thought we made clear in some of our earlier comments that it was the whole purpose. This is not a government amendment.

For reasons we enunciated, we rejected part of the amendment by Ms. Gigantes, but it was felt that the wording that formed part of that amendment gave further clarity to the bill and was keeping to the spirit of the charter, and that we would be willing to entertain it.

The Vice-Chairman: Any further speakers?

All those in favour of Ms. Gigantes's amendment?

All those opposed?

Motion negatived.

Mr. Partington: May I ask Ms. Gigantes a question? Does she now intend to go back to the original amendment, which was to replace the word "keep" with the word "place"?

Ms. Gigantes: I sensed there was some consensus for an amendment to clause 1(t) of the act. I would like to so move.

The Vice-Chairman: I sense it is the wish of the committee to deal with that amendment and to have the opportunity to vote on it.

Ms. Gigantes moves that the word "keep" in clause 1(t) of the act, as amended in section 31 of the bill, be deleted and the word "place" be inserted in lieu thereof, so that the clause begins, "'restraint' means place under control."

All those in favour of Ms. Gigantes's amendment?

All those opposed?

Motion agreed to.

Ms. Gigantes: It is a tied vote.

The Vice-Chairman: It carries.

Mr. Callahan: Is a motion that is tied not defeated?

The Vice-Chairman: The chairman votes to break a tie. The chairman votes in favour of the amendment.

Mr. Callahan: I did not see her hand up.

The Vice-Chairman: For the record, the vote was a 4-4 tie. The chairman voted to break the tie in favour of the amendment.

We will move to motion 5. Wait a minute; first we have to do "as amended," right?

Clerk of the Committee: No, because these are new sections.

The Vice-Chairman: We will move to motion 5. That is a government motion in front of you. It is another housekeeping motion moved by Ms. Hart.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 1 of the said act is amended by adding thereto the following clause:

"(ta) 'review board' means the review board appointed under section 30."

All those in favour, please signify.

Opposed?

Motion agreed to.

The Vice-Chairman: Now we are at motion 6. May I draw to the committee's attention that we are dealing with a new motion 6 that replaces Ms. Gigantes's previous motion 6.

Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(1b) Subsection 9(5) of the said act is repealed and the following substituted therefor:

"(5) An application under subsection 1 is sufficient authority for seven days from and including the day on which it is signed by the physician to any person to take the person who is the subject of the application in custody to a psychiatric facility forthwith for assessment by a physician."

Ms. Gigantes, do you want to speak to that?

Ms. Gigantes: The impact of this motion would be to provide that

subsection 9(5) would change and that an application by a physician would last for seven days, so that within those seven days the person could be taken to a psychiatric facility and would forthwith receive an assessment.

The Vice-Chairman: Ms. Gigantes, I have a list of those who would like to put a question. May I move to that?

Ms. Gigantes: Yes indeed.

Mr. Polsinelli: If your amendment carries, where does the psychiatric facility obtain the authority to detain the person, to restrain him, to observe and examine him?

Ms. Gigantes: That is still left in subsection 9(5), if I am reading it correctly.

Mr. Polsinelli: You are asking that 9(5) be repealed.

Ms. Gigantes: That is correct.

Mr. Polsinelli: Your motion requires 9(5) to be repealed. Where would the facility obtain the authority that is granted to the psychiatric facility in clause 9(5)(b) if you are deleting that subsection? Where would the facility retain that authority? If it wanted to restrain him, if it wanted to detain him, if it wanted to observe him and the patient refused, how would the facility be able to do its work?

Ms. Gigantes: I would refer ahead to subsection 14(3) of the Mental Health Act, which says "the officer in charge shall release a person who is the subject of an application for assessment" and so on.

Mr. Polsinelli: I believe that section is a direction to the officer for release after 120 hours of observation.

Ms. Gigantes: That is correct.

5:30 p.m.

Mr. Polsinelli: I am still questioning, within that 120 hours, where the psychiatric facility would obtain the authority to assess the patient and, in particular, to detain the person, to restrain him and to observe and examine him.

Ms. Gigantes: I think there is a mistake in the numbering here.

Interjection: Madam Chairman, could we open the window and let in some heat?

The Vice-Chairman: Could we do something about this refrigeration?

Mr. Partington: We did vote the bill last week. We presume the government can now pay the heat bill.

Mr. Callahan: You voted it too late.

Ms. Gigantes: I thank the committee for its display of patience. Subsection 9(5) is dealing with the application for the assessment. If we turn then to subsection 14(1), once there has been a determination by the

assessment that the patient shall become an involuntary patient, then under 14(1) the physician is given--

Interjection.

The Vice-Chairman: I am sorry to interrupt. I just want to be certain that we have full attention to the proposal.

Ms. Gigantes: Subsection 14(1) gives the physician all the powers to examine and observe. Obviously, the patient has already been detained in the sense that the assessment is complete.

Mr. Polsinelli: I may be mistaken, but subsection 14(1) seems to deal with the period subsequent to the 120 hours, subsequent to the assessment and the physician either admitting one as a voluntary or involuntary patient. I am talking about that period from the time a form 1 has been issued by a physician and that person is brought to the psychiatric facility, to the time the 120 hours expire. That is the period I am concerned about.

Mr. O'Connor: This is now provided for in 5(b) but seems to have been left out of your amendment.

Ms. Gigantes: Yes.

Mr. Polsinelli: In your amendment, perhaps you meant clause 9(5)(a). Did you wish to retain (b)?

Ms. Gigantes: Yes, it is clause 9(5)(a).

Mr. Polsinelli: So you want clause 9(5)(a) of the said act repealed?

Ms. Gigantes: That is right.

Mr. Polsinelli: In which case, your amendment would require the facility to do what it is going to be doing anyway, which is have the patient assessed by a physician.

Ms. Gigantes: That is correct.

The Vice-Chairman: Are we clear on what is being sought? The motion that is in front of you in Ms. Gigantes's name has been printed "subsection 9(5) of the act is repealed." It should read, "clause 9(5)(a) of the act is repealed," and 9(5)(a) is replaced with the paragraph you see on the printed material in Ms. Gigantes's name.

The effect of that motion would be to leave 9(5)(b) intact. Are we all clear on that? I am looking around to make sure. Are we clear? I thought I had it clear. Did I not have it clear?

Just a minute. I want to make sure that legislative counsel has this.

My understanding is that 9(5)(a) is deleted and the other is inserted in lieu thereof, but 9(5)(b) is maintained. If the committee members will permit me a moment with counsel, I think what she wants to do is replace the opener and (a) with that and keep (b). As long as we understand that 9(5)(b) is intended to be kept in the motion, we can deal with it at that point.

Mr. O'Connor: Ms. Gigantes, the only effect of your amendment would

be to add the words "for assessment by a physician." Perhaps you could explain the effect of that and how it changes the section as it now exists. What else would a person be taken to a psychiatric facility for, if not for assessment by a physician? How does the amendment help us?

Ms. Gigantes: I am having difficulties because when I look at the two amendments that I have proposed, I prefer the earlier one.

The Vice-Chairman: If we could have a decision with some dispatch, Ms. Gigantes. I am prepared to put the motion one way or the other but I would not like to have the committee debate at some length with one understanding if it is your intention to amend it.

Order please. If you want to take a moment and then share with the committee your intent with respect to clause 9(5)(b), which I think is at issue here.

Mr. Callahan, you wanted to speak while Ms. Gigantes was mulling this over?

Mr. Callahan: I get the impression that by adding those words, all the member is doing is something that is analogous to the duties of a police officer to take an accused before a justice of the peace forthwith or as soon as possible. It is trying to impose an obligation on the person taking custody to make certain that person is seen forthwith by a physician.

I would suggest that without putting some other reasonable clause in there that would allow that, if a physician is not available for some lengthy period of time, they place that institution in serious difficulties from a legal standpoint. This person may very well be violating that person's right.

I have not looked to see whether there are penalties under this act but I would suspect that if a patient raised the argument that he or she had not been seen forthwith by a physician, and perhaps there was a reasonable reason, that they may very well be liable to the penalties. I do not see where it enhances the position. I agree with Mr. O'Connor. All it really does is to put greater roadblocks in the way of dealing with these people.

The Vice-Chairman: Mr. Callahan, so that everyone is clear on the thrust of your remarks, are you arguing for the retention of clause 9(5)(b)?

Mr. Callahan: Or, if she wants to change it, there should be some alternative forthwith because it may not be practical on all occasions.

The Vice-Chairman: All right. I am going to suspend discussion and return to Ms. Gigantes and request that she clarify for the committee the motion that she is putting before us so that we do not spend our time discussing something that is not before us.

Ms. Gigantes: There are three ways that a person gets to a psychiatric facility for an assessment. He goes at the invitation of a justice of the peace, because a policeman takes him or because a doctor makes an application, which is good for seven days.

Currently, as subsection 9(5) reads, when the doctor makes the application which is good for seven days, any person who is escorting the subject of the application to a psychiatric facilities is told that that person will now be detained, restrained, observed and/or examined for not more than 120 hours under clause 9(5)(b) of the Mental Health Act.

I am saying there should be an assessment for the purpose of deciding whether that person is going to an involuntary patient under the Mental health Act. There is nothing currently in subsection 9(5) that indicates a physician's application is for the purpose of an assessment when the person is brought in on day four or day seven of the doctor's application that an assessment is going to occur.

We can say that the person is going to be restrained, observed and examined or any of those items, but it does not say that an assessment is going to occur.

5:40 p.m.

Mr. Ward: Under subsection 1, an assessment is already taking place though.

Ms. Gigantes: Subsection 1 is the application by the--where are we?

Mr. Ward: No. I will read it for you: "Where a physician examines a person and has reasonable cause to believe that the person," then clauses (a), (b), (c).

Ms. Gigantes: Yes, but the physician is applying for the person to become an involuntary patient. A physician signs a form that says that at any time in the next seven days, anybody who sees this person can take him to a psychiatric facility. But it is not clear in subsection 9(5) what happens when he gets there.

We know he is going to be detained; he may be restrained; he is going to be observed and examined but it does not say for what purpose. We have to link that application, as we do in the case of the justice of the peace and the police officer, with the need for an assessment. That assessment is part of the legal structure of this act.

Mr. O'Connor: I am lost now, in the light of the comments made by the Mr. Ward. If we go back to subsection 9(1), it appears he has been seen by a physician and examined. In order to get to subsection 9(5), some assessment has to have already been made. Thus, to add the words "for assessment by a physician," is redundant. That assessment has been made. How does it assist us?

The Vice-Chairman: Mr. Sharpe would like to offer some explanation on how this works. Perhaps we could ask for a response.

Mr. Sharpe: The language is a bit confusing, I agree, but the notion is that one attempts to get patients who meet the criteria to a specialist as quickly as possible and have them assessed by that specialist.

It was indicated that there is a provision for the family to swear an information before a justice of the peace and have an order made to have the person examined by a physician. It may be that the result of the order will be to take him to a hospital.

At that point, the person has not been seen at all by a doctor. Of course, the same applies to the police. The police pick up someone who meets the criteria particular to the police powers and take the person to a doctor.

Then a doctor looks at the person and decides whether or not he should be in hospital. That doctor acts under section 9. In other words, section 9

begins with the need for the doctor actually to see the person and speaks in terms of an examination by a physician. Whether you use assessment or examination, the person has at least been examined by a doctor at that point.

The doctor now decides the person meets the criteria and should be in a psychiatric facility. Up until now he does not necessarily have to have been taken to a facility. Then the doctor completes the initial committal form. That is the form that is used to take the person to a facility for a specialist assessment, a psychiatric assessment. Under the current law, that period during which the assessment can take place is 120 hours.

I believe that later on there is a motion to reduce that to six hours. I think there was evidence presented during the hearings by some of the professionals to the effect that might create problems. I thought that the thrust of the motion was to reduce the period. You would still want the "forthwith" because once the doctor decides that a person should be taken to a hospital and fills out that initial committal form, it is important that the person be taken as swiftly as possible to the specialist facility.

At that facility, it is hoped experts will spend time doing a thorough psychiatric assessment. This is the period that, up until 1978, was reduced from a month to 120 hours. That is the period about which there was much discussion last week with the Ontario Hospital Association as to what is an appropriate time.

My understanding of the thrust of Ms. Gigantes's amendment was to reduce the period of 120 hours to six hours. Is that not correct?

Mr. O'Connor: Not in this amendment. This amendment does not do that. It only adds the words after "forthwith." We are all content that "forthwith" should be there. She adds the words "for assessment by a physician." Our point, and Mr. Ward's point, is that assessment has already taken place under subsection 9(1). How does it assist the process to add those words in clause 9(5)(a)?

Mr. Sharpe: If I could continue, it indicates at the end of subsection 9(1) that the application is specifically for psychiatric assessment. Under section 14, after the assessment has taken place, there is the power to prepare an involuntary committal form, to involuntarily commit the person. At that point, there has already been an examination by a physician and, as a result of that, a determination that the person should be taken to a hospital for a thorough psychiatric assessment.

Is it really necessary to add those words, because the purpose for which the person has been taken is already part of the package? It says right on the form that it is an application for psychiatric assessment.

Ms. Gigantes: If Mr. Sharpe is content that the introductory subsections of section 9 indicate that the purpose of the trip to the hospital indicated on the doctor's application is for an assessment, that is fine.

I have a further amendment that deals with the length of time for assessment, which would also affect the same clause. We do not have an amendment to that effect currently before us, so I might as well put the amendment while we are on subsection 9(5), because we will deal with it later as my replacement for motion 8.

Mr. O'Connor: Are you withdrawing the present one?

Ms. Gigantes: I feel satisfied.

The Vice-Chairman: Your replacement for motion 8 deals with subsection 14(3).

Ms. Gigantes: That is correct.

The Vice-Chairman: It deals with 120 hours going to six hours. You are saying you wanted to make a parallel amendment to clause 9(5)(b). Is that correct?

Ms. Gigantes: That is correct.

Mr. O'Connor: Just to get everything straight, am I correct in that Ms. Gigantes is withdrawing motion 6?

Ms. Gigantes: Yes.

Mr. O'Connor: So we can put that aside, and go on to motion 8, amending clause 9(5)(b) and changing 120 hours to six.

Ms. Gigantes: No, because it amends a different subsection, 14(3). There are two references to the hours involved in the assessment.

The Vice-Chairman: The first thing I want to know is, are you withdrawing motion 6 as printed?

Ms. Gigantes: I will.

The Vice-Chairman: And you would now like to put an amendment to clause 9(5)(b), to change the period from 120 hours to six hours. Is that correct?

Ms. Gigantes: Yes.

The Vice-Chairman: That is not a numbered motion before you. The written motion 8 is to amend subsection 14(3), and proposes to reduce the period of assessment from 120 hours to six. Ms. Gigantes would like to put that same amendment to clause 9(5)(b), where reference is similarly made to a maximum period of 120 hours, to reduce that to six hours.

The first one we will deal with is the one not written. I will point you to it again, and perhaps I should read clause 9(5)(b). As it currently reads, it is "to detain the person who is the subject of the application in a psychiatric facility and to restrain, observe and examine him in that facility for not more than 120 hours." Ms. Gigantes's amendment is to say, "for not more than six hours."

Are you all clear on the amendment? Are there any speakers?

Mr. Partington: I speak in opposition to the motion.

We heard substantial evidence that more than six hours was required in the event that families were on vacation, doctors were not available, and so on. Time is necessary to make a proper assessment, otherwise we run the risk of people being turned out into the public where they could do more harm to themselves or others.

5:50 p.m.

There was one other point made that, if necessary, doctors could err on the safe side and commit the individual for longer than the six-hour period.

I would vote against the amendment.

Mr. O'Connor: Part of the difficulty we are dealing with is the wide divergence or difference between 120 hours and six hours. They seem to be two outside absolutes. I say that keeping in mind that not too long ago that 120 hours was 30 days. The 120 hours is a considerable compromise from the 30-day period. However, to give us the choice of six hours or 120 hours seems an inflexibility I do not relish.

There was discussion with some of the witnesses and between Ms. Gigantes and the Attorney General on some compromise between those two figures. Let me ask Mr. Ward about the comments of the Minister of Health on this issue. Why do we have to deal with those two extremes? Is there any compromise figure in between? Is there any study going on? Is this part of the study, to which the minister referred earlier, that is doing an overall review of the act?

Mr. Ward: If you look at other jurisdictions you will see there is a variance across the country. Some have 30 days, some have 24 hours and some have had different numbers. When the Ontario Hospital Association was before us and we had considerable discussion, the Attorney General suggested it come back to us and make a recommendation in regard to this. Perhaps the figure is somewhere between six hours and 120 hours. Your point is well taken and valid.

My impression was that this committee clearly left with the OHA some direction to come back and make a suggestion to us. I wonder how appropriate it would be for us to amend that section with the six hours, having asked for that specific indication from the OHA.

Mr. O'Connor: Our difficulty is that we have to vote on it today. We have not heard further from the OHA on its recommendations. I feel I have to go along with 120 hours as the safer of the two extremes. Will there be an opportunity for us to come back to this section during these deliberations or at some later time during this session to deal with the issue? Perhaps we can stand it down.

The Vice-Chairman: There is a lot of whispering going on up here because we are all trying to get our cues correct. Rather than having me repeat it, perhaps I will ask our clerk to explain the advice procedurally.

Clerk of the Committee: If the committee has not reported the bill back to the House at the time you hear further, or should you feel that you have had advice that you may want to move an amendment to this section, you can reopen the section at that time if you have unanimous consent of the committee and if the bill has not been reported back to the House.

The Vice-Chairman: My impression is it would be possible to come back to it, but it would be within the period of time the bill as a whole remains with the committee.

Mr. O'Connor: Is it not the better route to follow to stand down amendments to this section and section 8 of the Mental Health Act, pending hearing from the OHA. If we do not hear from it, we can deal with these two sections as a last matter before we report the bill.

The Vice-Chairman: Ms. Gigantes, this deals with deferring consideration of your amendment. Do you wish to defer consideration?

Ms. Gigantes: I do not mind doing that. I would not be willing to have us deliberate and vote on it and then hope we have consensus later to reopen it, because I do not think that is going to happen. Mr. Partington has already indicated he wants 120 hours and that is it.

The Vice-Chairman: If that is the case, you might wish to stand down your amendment.

Ms. Gigantes: I am quite willing to have it stood down if that is how the members would prefer to deal with it at the moment.

Mr. Warner: It may be useful to put aside the matter until the end. There may be other items as we go along. We can tidy it all up at one point. I would not want to see us get into a numbers game where it is either this or something else, and that is all we will deal with. Tied in with this is something that really intrigued me, namely, the comments made by Dr. Hoffman when he was here. He said, in effect, that regardless of what hours we decide on, whether it is 120 or something less, the patient should be guaranteed access to the review board if he or she desires. It is not in the act now. The fundamental point in protecting civil liberties is the opportunity and the right to appeal something.

Let us suppose for a moment we have heard from the Ontario Hospital Association and it has come back and given us a different number. Even if we decided to set it aside and come back to it, we may not like that number and we may decide we want to stay with 120. We might then think that is the end of it. I suggest it should not be the end of it. I am in favour of patients having an automatic right to the review if they choose. Obviously, they do not have to take it if they do not want to, but that right is built in. In a sense the hours are then not quite so controversial, but those matters are tied together.

To be honest, I am not sure in what section of the bill the right to the review panel belongs, but I suggest we deal with that as well. I agree we should put this particular amendment in the section. We may want to add to section 14 because it is the same thing. We could set it aside for later and then vote on it. We may want to leave it until the end so we tidy up a number of things at one sitting.

The Vice-Chairman: I am going to suggest Ms. Gigantes asks that her amendments be stood down. I will ask the clerk to get us a typed motion 6 dealing with Ms. Gigantes' oral proposal to replace 120 hours with six hours in subsection 9(5b). I will also stand down motion 8 dealing with the same substance but in a different section of the act. Is the committee in agreement with that?

Agreed to.

The Vice-Chairman: We will stand that down for now and it will be brought forward later. I hesitate to say the absolute last item of business before we report the bill, because we get tied up in other bits we may want to deal with. Let us say it will be stood down until later.

Mr. Warner: In your capable hands.

The Vice-Chairman: Yes, or something.

Mr. Ward, you have no problem there?

Mr. Ward: I would not say no problem.

The Vice-Chairman: I meant in terms of standing down only. Do not let me mislead you.

Committee members, we will then move to motion 7 standing in the name of Ms. Gigantes. I direct you again to the fact that we have a new motion 7 replacing the earlier one that was distributed. This deals with subsection 31(lc).

Ms Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection 31(lc): "Section 12 of the said act is amended by inserting after 'section' in the first line '9'."

Ms. Gigantes: This is a kind of housekeeping matter, but it has substance. Section 12 now says that the application of a justice of the peace, which comes under section 10, or a police officer under section 11, which leads to the conducting of a person to a place of assessment which, where practical, shall be a psychiatric facility or health facility. Taking a person to the facility will trigger an assessment.

6 p.m.

The amendment would mean that a doctor's application would be treated in the same manner as the action of a JP under section 10 or a police officer under section 11. I may hear again from Mr. Sharpe that this is not necessary, that it is already laid out at the top of section 9, but I think it would make a great deal of sense for us to indicate in section 12 that all three types of mechanisms for having a person arrive at a health facility or a psychiatric facility trigger the same process, which is a forthwith assessment.

Mr. Callahan: I think the attempt was made to say that in the case of the friend, relative or whoever goes before a justice of the peace, he may have very bad reasons for wanting that person out of the house and taken to a facility. Perhaps even the police officer might misunderstand what is happening. That is the reason they are asking for a professional person to do an assessment in the subsection 9(1) application. You trigger it with a physician's assessment. All they are talking about under section 12 is something to validate the reason the person is there, and then you get to the detailed assessment. That is really what section 12 is. Whatever comments may be made, that is the purpose of it. To put section 9 in there means that the person who comes in on a form 1 application gets two shots at the physician as opposed to one.

Mr. O'Connor: As I understand it, the effect of the amendment would be to require that all assessments, whether they come by way of the physician, the justice of the peace or the peace officer, be made at a psychiatric facility. In other words, it takes away from the doctor under section 9 some of the flexibility he or she now has to do an assessment wherever he or she may find the patient.

Perhaps that is not a good thing to take away that flexibility in that if he is required to bring the person to a hospital and he will not come voluntarily, resort may then have to be had to sections 10 or 11, either going

to a justice of the peace or a policeman. Surely it is a less dramatic or traumatic experience for the patient to be dealt with by the physician at his or her home without the intervention of the legal authorities--i.e., a police officer--which can be an upsetting and unsettling thing. Is it not to leave more flexibility with the doctor to do the assessment in the first place where he finds the patient? It may be that he will find the patient well enough to stay at home and he will not have to be dragged to a hospital.

Mr. Callahan: It says "where practicable."

Ms. Gigantes: The section that we are dealing with, in fact the sections that are mentioned in section 12, lead to an assessment for the purpose of an involuntary admission. We are not talking at all about inhibiting a doctor from assessing or treating somebody at home. There are three categories of people who can make an application to have somebody involuntarily committed.

All we are saying is that in the case of the family physician, for example, who can write a seven-day application--an application that is good for seven days to allow any other person to conduct the proposed patient to a facility--it just says that his application will be treated as a JP's will be treated, as will a police officer's be treated, in that it shall trigger at the facility this assessment, which is part of the mechanism of this legislation for the involuntary admission.

The law does not now permit a physician to make an assessment of somebody at home and then say that person is involuntarily committed. The physician makes an application which is good at a facility and an assessment must be at the facility by a physician. That will be another physician. It is important for us to be clear what happens now. Right now, a physician's application is dealt with by another physician. We are not changing that at all. All we are saying is that it shall be dealt with at the facility as promptly as possible and it shall involve what we call under this legislation, an assessment. The assessment is for purposes of defining whether a person should be involuntarily committed.

Let me suggest, Mr. O'Connor, if you have concerns about somebody going to a JP and asking for a member of the family or somebody across the street to be committed, we are not leaving the decision on assessment to doctors who have close relationships with any one of the parties to all this. The doctor makes an application, and it is a good one. It lasts for seven days. Anybody can pick up the person and take him to the facility, but somebody else there has an obligation.

I want it to be the same obligation we put on the facility, and the attending physician at the facility, for the other mechanisms. That is all. We say it shall be for the purpose of an assessment, and it shall be forthwith.

The Vice-Chairman: Mr. Sharpe would like to add some comments at this point.

Mr. Sharpe: Section 12 is designed to pick up on an order by a JP or on the actions of a police officer. For example, in many remote areas of the province, it may not be possible to get the person to a facility. He may be taken by a police officer to a doctor's office, or, in some communities, if he is quite dangerous, he may be held in jail until a doctor can be brought to see him. This keys in with my earlier remarks. This is simply to pick up on the JP and on police actions. We are saying "where practicable the place shall be a psychiatric facility or other health facility."

As a result of that examination, the physician fills out a form 1 application for psychiatric assessment. Section 9 would not really be appropriate as a reference in section 12. When we go to subsection 9(5), the only place the person can be taken is a psychiatric facility, and he is to be taken there forthwith: "An application under subsection 1 is sufficient authority...to any person to take the person who is the subject...to a psychiatric facility forthwith." Once section 9 is triggered and the physician has operated under it, the subject must go to a psychiatric facility.

Section 12 picks up one step before that. At that point, a physician has not seen the person. All you are doing there is trying to get him to a physician and you are saying that, where practicable, he should see a physician in a hospital. In section 9, a physician has already seen him, wherever that might have happened. We are saying that once a physician has seen him and acted, he must go to a psychiatric facility.

Ms. Gigantes: I understand what you are saying. My concern is that there seems to be less onus in the decision, the determination by assessment, about whether the patient shall be involuntary, voluntary or not a patient. When there is an application by a physician, there seems to be less onus to make that determination forthwith. Can you indicate to me how I can achieve the purpose I am after, to make sure that even with the physician's application you are going to have an assessment forthwith?

Mr. Sharpe: In section 12 you are dealing with a situation in which a physician has not seen the person at all--

Ms. Gigantes: I understand.

Mr. Sharpe: --and you want him taken to a physician, preferably in a hospital. In section 9 a physician has at least seen him.

Ms. Gigantes: Yes.

Mr. Sharpe: The patient has to be taken to a facility forthwith and admitted for up to 120 hours for a thorough psychiatric assessment.

6:10 p.m.

Mr. Callahan: You could change subsection 9(1) to say, "Where a physician assesses a person" to bring them all in line. I think that is where Ms. Gigantes is concerned. Under section 12, you are using an assessment, but section 9 begins by saying, "Where a physician examines a person," and goes on to say that "the physician may make application in the prescribed form for a psychiatric assessment of the person."

Ms. Gigantes thinks there is a difference. I do not think there is, with respect. I agree with you. The two others are just to show that the person deserves to be there to begin with, but it may just be the wording. It seems to be an examination under subsection 9(1), but section 12 talks about an assessment. I imagine they are exactly the same, but the terminology implies one may be more detailed than the other.

Mr. Polsinelli: I may be misunderstanding how the section operates, but it seems to me the assessment made forthwith by the physician under section 12 merely keeps the person detained for five days to determine whether he should be involuntarily committed. Is that not the situation, Mr. Sharpe?

Mr. Sharpe: I am sorry. I did not--

Mr. Polsinelli: I am suggesting the assessment required under section 12 is more or less to determine whether the police officer had sufficient grounds to bring the person there and whether the person should be committed for five days for a proper assessment to determine whether he should be involuntarily committed. It is not an assessment to determine whether the person should be involuntarily committed, but whether he should be detained.

Mr. Sharpe: That is right.

Ms. Gigantes: When a physician in the community examines someone and writes an application for the person to be conveyed for an assessment, two physicians are involved. There is the initial physician who makes the application and there is the physician at the facility. I am trying to ensure that the physician at the facility has some element in this law to look to that triggers a forthwith assessment.

Mr. Sharpe: Corresponding to that?

Ms. Gigantes: Yes.

Mr. Sharpe: I believe it is consistent with the amendment that has been stood down with respect to the six-hour period. The thrust of this legislation is that as long as a physician has examined the patient--and we could make some amendments to make the terminology consistent so it is the same term in sections 12, 10, 11 and so on--and has filled out an application for a thorough assessment, the assessment period does not have to be forthwith or six hours; the hospital has up to 120 hours to do it.

I take it you are suggesting you would like that to be either forthwith or within a fairly short period.

Ms. Gigantes: That is correct.

Mr. Sharpe: As I understand it, that is the amendment you proposed and that was stood down for later discussion.

Ms. Gigantes: Yes and no. That amendment may or may not pass. If it does not pass and if we continue with 120 hours as the maximum period of assessment, then I would also like to have something in this legislation indicating that a physician's application, as well as the motion of a JP or a police officer, shall trigger an assessment forthwith. That "forthwith" would extend to 120 hours, but if it were possible--

Mr. Polsinelli: That is not the purpose of that section. Its purpose is to provide additional protection--

The Vice-Chairman: Hold it, Mr. Polsinelli. I have a speaker's list with people ahead of you.

Mr. O'Connor: Section 9 is a self-contained section that does not require us to refer to section 12 for any assistance, in that it goes on, as sections 10 and 11 do not, to provide for a subsection 5 that sets the time frames for dealing with the person once he has been brought to the psychiatric facility. He must be dealt with, examined, restrained, observed and whatever else is allowed within 120 hours because he has been brought to the facility as a result of an application for an assessment--a form 1--by a physician who has examined him.

In the other cases, where a physician is not involved, you want the person to be dealt with immediately, to provide professional protection to him that was not afforded in the first instance, as is the case under section 9. Therefore, section 12 does not require the addition of section 9, which is a self-contained section and which already has the involvement of a physician in the first place.

Ms. Gigantes: If it is acceptable to the committee, I am willing to stand down this amendment to see how we deal with the six-hour period as opposed to the 120 hours, because they are linked. If we are not going to cut down the period of assessment, then I very much want to feel that whatever occurs at a facility as a result of an application by a physician is also delivered forthwith, no matter what maximum period of assessment is allowable.

The Vice-Chairman: Can we deal with the question of standing this down, as distinct from the substance?

Mr. Partington: I am opposed to standing it down. I believe we have had a very thorough discussion of these sections and how they relate to each other. I am satisfied with the consensus I believe has been arrived at and I want to deal with this amendment right now.

The Vice-Chairman: Mr. Callahan, on the question of standing it down only.

Mr. Callahan: Before I can decide that, I want to be clear on what Ms. Gigantes is talking about. It seems to me with sections 10 and 11, the possible danger that exists there is exactly what Mr. Sharpe said.

Let us say a police officer arrests a person because he is doing strange things and holds him in a cell until such time as he can take him before a JP. There is nothing moving him swiftly to get before that JP. The JP even has a discretion--it says he may issue an order--and the man has never been seen by a physician up to that point. If that is what she is saying, I agree there should be a triggering mechanism to get that guy out of the cell and to a physician.

Section 12 does not cover it because it says, "An assessment under section 10 or 11 shall be conducted by a physician forthwith after receipt of the person at the place of assessment." If you have no triggering mechanism to get him out of the cell to the location of the assessment, he could be delayed longer than the person who is taken before a physician under subsection 9(1). Until I know that, I cannot--

The Vice-Chairman: The question is put to Mr. Sharpe.

Mr. Sharpe: Yes. The police power, which is in section 11, does not permit them to take the person to a cell and hold him there. They have to observe disorderly conduct. They have to perceive the criteria as being met. As it says at the bottom of section 11, then they "take the person in custody to an appropriate place for assessment by a physician." Then section 12 keys in and says that it shall be conducted forthwith.

If it happens in a remote community where they cannot take the person to the health facility or psychiatric facility, which is the preferable place, and they have to take him to a cell, then forthwith, on receipt at that place, a physician must be brought in and the person assessed.

Mr. Callahan: With all due respect, at the end of section 11 it says "may take the person in custody to an appropriate place for assessment by a physician." It is not mandatory.

Mr. Sharpe: No, because you would not want the police to have to respond every time they see someone in this situation. The police exercise a discretion and may decide that, notwithstanding that the various criteria are met, they exercise the decision to charge the person with a disorderly conduct offence. Instead of being forced to take the person to a hospital, they may have decided he should be taken to jail and charged.

Mr. Callahan: I do not know whether that is what Ms. Gigantes is getting at, but it would give me some cause for concern that they may see this acting out and decide, "We do not like what he did and we are going to keep him in a cell." There is no mandatory requirement that they take him for an assessment. It is only when he gets to the location that--

Mr. Sharpe: They cannot keep him in a cell. In order to keep him in a cell, they would have to charge him with a criminal offence. They could not keep him under the Mental Health Act. The idea of "may" is simply to give them the option of using the Mental Health Act or some other mechanism, or not doing anything. They may decide, "Yes, that is so-and-so and we will call up his social worker," and deal with it in that fashion.

Mr. Callahan: Where is there anything in section 11 that prevents them from keeping him in custody?

Mr. Sharpe: Under the Mental Health Act?

Mr. Callahan: Yes.

Mr. Sharpe: As I said, if they are taken under section 11 to a place for assessment by a physician, then that triggers section 12, which says an assessment under section 11 shall be conducted by a physician forthwith after receipt at the place of assessment. Where practicable, it shall be a psychiatric facility or other health facility. There is an obligation in section 12 that wherever the police take that person under section 11, a physician must forthwith conduct an assessment. They cannot be left there.

6:20 p.m.

Mr. Callahan: I do not want to belabour this, but if they feel it is not too dangerous to go to the JP, subsection 10(3) says, "An order under this section shall direct, and, for a period not to exceed seven days from and including the day that it is made, is sufficient authority for any constable or other peace officer to whom it is addressed to take the person named or described therein in custody forthwith."

The Vice-Chairman: Mr. Warner had a question on the same point.

Mr. Warner: Where the police officer has taken the person to an appropriate place for assessment--and you said that is what triggers section 12--the current 120-hour limit is inherent in that. Is that correct?

Mr. Sharpe: No, because it is as a result of that assessment by the physician that section 9 might be triggered, and it is only where the physician has taken positive action under section 9 that the individual is taken to a psychiatric facility and held for up to 120 hours.

It might clarify matters--and perhaps we can work with the draftsman during the break--if in sections 10, 11 and 12, instead of saying "for assessment by a physician," we say "for examination by a physician," which is the language used to trigger section 9. It says, "Where a physician examines a person."

Mr. Callahan: That would change section 12, then.

Mr. Sharpe: Yes, that is correct.

Mr. Callahan: That would make it consistent.

The Vice-Chairman: Do I sense an emerging view that this is an appropriate place to adjourn the debate?

Mr. Warner: Just one last question. In essence, you have made a distinction between the opinion put forward by a physician, the opinion put forward in front of the JP and the opinion rendered by a police officer.

Mr. Sharpe: That is correct.

Mr. Warner: You have put the latter two together. Where that opinion is expressed, there must first be an examination by a physician, the result of which may be section 9.

Mr. Sharpe: That is correct.

Mr. Warner: Where the person has been examined by a physician, he automatically comes under section 9, which is perhaps why Mr. O'Connor said he believed section 9 to be self-contained. Perhaps the drafting change from "assessment" to "examination" would be of help, and might answer the problems.

The Vice-Chairman: All right. I still have Mr. Partington on the list. Do you have a further contribution, Mr. Polsinelli?

Mr. Polsinelli: No, that is fine.

The Vice-Chairman: I have no other speakers. Is it the wish of the committee to proceed on this matter this afternoon? Do you require the amendment read?

All those in favour of the amendment in the name of Ms. Gigantes?

Ms. Gigantes: I will withdraw this amendment, and see what we have in terms of a clarification of section 12 that may point our way to reconsideration of the 120 hours.

The Vice-Chairman: One moment, please. Mr. Partington?

Mr. Partington: Does that mean you are withdrawing it?

Ms. Gigantes: I have withdrawn it.

The Vice-Chairman: Ms. Gigantes is withdrawing motion 7. I take it the committee is agreed to it being withdrawn.

Mr. Callahan: The question was called, was it not, to withdraw on condition that you will bring it back with the wording--

Mr. Partington: That is my point. It is not a conditional withdrawal but an absolute withdrawal.

Ms. Gigantes: No, it is withdrawn.

The Vice-Chairman: Just one moment. I am trying to operate in a fashion that provides some help to the committee.

Ms. Gigantes indicated she was withdrawing the motion. She thought there might be something else coming forward. It was not established as a condition; it was by way of explanation of her move to withdraw. I take it the committee is agreeable to the motion being withdrawn and provides consent. Motion 7 is withdrawn. We will see you tomorrow after routine proceedings.

The committee adjourned at 6:25 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT

TUESDAY, JUNE 3, 1986

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Knight, D. S. (Halton-burlington L) for Mr. Polsinelli

Clerk: Mellor, L.

Staff:

Baldwin, E., Legislative Counsel

Witness:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 3, 1986

The committee met at 4:06 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

The Acting Chairman (Mr. O'Connor): The committee will come to order, please.

On section 31:

I am advised we are to look at motion 9, which is a government amendment. If it is organized, I ask Mr. Knight to read it to the committee, and thereafter I will call on speakers.

Mr. Knight: Thank you, Mr. Chairman. It is nice to be back in the standing committee on administration of justice as the official mover for the government party.

Mr. Callahan: Are you a shaker as well?

Mr. Knight: I am always ready and willing to fill in when needed.

The Acting Chairman: Mr. Knight moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Clause 20(3)(b) of the said act is amended by striking out 'a review board or advisory review board under this act' in the first and second lines and inserting in lieu thereof 'the review board.'"

Hon. Mr. Scott: Some honourable members, "Explain, explain."

The Acting Chairman: Are there any speakers? If not, I will call on the Attorney General to explain what it means.

Hon. Mr. Scott: As I recall, it is an effort to get the new centralized review board in place. It is one of the collateral amendments that has to be made for that purpose.

The Acting Chairman: Are there any questions or comments?

All those in favour of the amendment? Opposed?

Motion agreed to.

Ms. Gigantes: You will find motion 10 in the blue package that was distributed yesterday. It is a two-page motion and it says at the bottom of the second page, "Replaces motion 10."

The Acting Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(1e) Section 23 of the said act is amended by adding thereto the following subsections:

"(1a) Before completing a memorandum of transfer, the officer in charge shall notify the patient in writing of the intention to transfer and of the reasons for the proposed transfer.

"(1b) A notice under subsection (1a) or (1e) shall inform the patient that the patient or any person on his behalf is entitled to a hearing by the review board if the patient or the person gives or transmits to the officer in charge notice in writing requiring a hearing, and the patient or person may so require such a hearing.

"(1c) If the patient or any person on his behalf gives or transmits notice requiring a hearing, the officer in charge shall not complete a memorandum of transfer unless and until authorized to do so by an order of the review board.

"(1d) If in the opinion of the officer in charge an immediate transfer is required to prevent imminent and serious bodily harm to the patient or to another person, the officer in charge may complete a memorandum of transfer and may transfer the patient immediately.

"(1e) Forthwith after the transfer of a patient under subsection (1d) the officer in charge shall notify the patient in writing of the reasons for the transfer.

"(1f) Subsections (1a), (1b), (1c), (1d) and (1e) apply with necessary modifications to the transfer of a patient to a more secure setting within the same psychiatric facility."

Ms. Gigantes: If I could speak very briefly to the motion, it is a very simple motion that I wish to introduce into the Mental Health Act. In terms of the equality rights section of the charter, it will give patients the same rights as convicts now have within our penal institutions and have been given on court order.

It would mean that in the case of an emergency, the officer in charge would be allowed to effect a transfer either to another facility or within the same facility and seek subsequent approval. It would also mean that in most cases where a transfer was going to take place and there was no imminent and serious bodily harm threatened to the patient or to another person, the patient would have the right, first, to know he was going to be transferred and, second, to go to the review board to have the reasons for the transfer examined.

I suspect in most cases there would not be an application to the review board. This section would allow the patient to make such an application.

The Acting Chairman: Are there any other speakers?

Hon. Mr. Scott: The Ministry of Health is opposed to this proposal. Its motive is to allow the patient to know before the transfer occurs and to permit a review of the transfer at his request which might be on either therapeutic grounds or personal grounds, in the sense that he may be removed from the neighbourhood where his family or friends are located.

The member has noted correctly that the courts, in comparable cases and perhaps in these very types of cases, have treated this as a statutory power of decision. If a transfer is effected with which the involuntary patient is not content, a judicial review is available. What this proposal does is insert another layer of decision-making before you get to judicial review. A court can look at transfers and their propriety. In my respectful view, inserting another level of review and another level of paperwork before that occurs is not useful.

The Acting Chairman: Are there any other comments or speakers?

All those in favour of Ms. Gigantes's motion? All those opposed?

Motion negatived.

The Acting Chairman: Next, we will look at subsection 31(2) on page 13 of the bill. It amends subsection 29(3) of the act by striking out "majority" wherever that word appears and inserting in lieu thereof in each instance "16 years."

Is there discussion required? I am looking at page 13 of Bill 7, subsection 31(2), which is the next in order of all the amendments.

Ms. Gigantes: I believe there is another amendment.

The Acting Chairman: Motions 11 and 12 in the package hinge on motion 13 or relate to and rely on motion 13. We should do 13 prior to doing those two, but subsection 31(2) is prior to those three.

Mr. Warner: It is a government amendment, so a government member should read it.

The Acting Chairman: Mr. Callahan moves that subsection 31(2), as printed, carry.

Is there any discussion on that motion? If not, all those in favour? Opposed? Carried.

Next we should go to subsection 31(3). Mr. Callahan, perhaps you might move that.

Mr. Callahan moves that subsection 31(3), as printed, carry.

Is there any discussion on that motion? Those in favour?

Ms. Gigantes: On this one, there is a limitation on whose word can be accepted to give consent. It is limited to the person married to the patient or to the person with whom the patient is living outside marriage. It does not seem to follow the same rules we had for other sections. Do we have another amendment perhaps?

Hon. Mr. Scott: Ms. Gigantes is correct. The formula, if I can call it that, we have been using is found in the next motion. Rather than pass subsection 31(3), if we move to motion--

The Acting Chairman: Perhaps I can assist. Motion 15a would solve the problem Ms. Gigantes raises. I will, therefore, ask Mr. Callahan to read motion 15a on behalf of the government.

Mr. Callahan moves that subsection 29(3a) of the said act, as set out in subsection 31(3) of the bill, be struck out and the following substituted therefor:

"(3a) Where a person who gives a consent under this section claims to be,

"(a) married to the patient; or

"(b) a person of the opposite sex with whom the patient is living outside marriage in a conjugal relationship, if the person and the patient,

"(i) have cohabited for at least one year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986,

"but is not so related, the consent is valid for the purposes of this act if the person who acted upon it had no reason to believe that the person who gave it was not so related."

Is there any discussion on that?

Ms. Gigantes: Why is there that limitation for the first two enumerated categories in the consent schedule, in other words, the person who is married to the patient or the person who is a spouse of the patient? There is no limitation, for example, if somebody trots in and says he is the estranged spouse. Is the doctor held accountable if that person is not the estranged spouse?

Hon. Mr. Scott: I am not sure I understand the question. We have established that the nearest relative is a declining series of priorities.

Ms. Gigantes: This is the clause that limits the liability, as it were, of the physician in seeking a consent from the schedule. Why does it apply only to, or does it apply to--

4:20 p.m.

Hon. Mr. Scott: I believe the theory advanced is that this was perceived to be a more difficult judgement than the others contemplated by clause 1(j) of the act. Therefore, the protection was sought in this case. It might have been sought for all cases, but it was not.

Ms. Gigantes: If somebody comes in and claims to be the estranged spouse, the doctor is liable if he takes the consent and that person is not the estranged spouse.

Hon. Mr. Scott: As I understand it, if a patient comes in and gives his or her consent alleging that he or she is an unmarried spouse and he or she is not, the doctor is protected if there was no reason for him to believe that he or she was not.

Ms. Gigantes: If somebody comes in and says, "I am the estranged spouse," the doctor is not protected.

Hon. Mr. Scott: Let us see. I take it by "estranged" you mean a person who would come into subcategory 3 of clause (j).

Ms. Gigantes: Yes.

Hon. Mr. Scott: It was the word "estranged" that got me. You mean a person who is married but living separate and apart.

Ms. Gigantes: Yes.

Hon. Mr. Scott: Then the protection would not be available.

Ms. Gigantes: That is interesting.

The Acting Chairman: Is there any further discussion on that motion? May we put the question?

Ms. Gigantes: We are voting on motion 15a?

The Acting Chairman: Yes. All those in favour? Opposed?

Motion agreed to.

The Acting Chairman: We now move to motion 13. If this passes, we will go back to 11 and 12. Motion 13 is a government motion. Will somebody move it on behalf of the government? Is there somebody officially appointed?

Mr. Callahan moves that section 31 of the bill be amended by adding thereto the following subsection:

"(3d) The said act is amended by adding thereto the following section:

"29a. (1) A patient who has attained the age of 16 years and is mentally competent is entitled to examine the clinical record of the patient's observation, examination, assessment, care and treatment in a psychiatric facility or a copy of that record.

"(2) A patient seeking to examine a clinical record shall make a request for it in writing to the officer in charge.

"(3) Subject to subsection 4, the officer in charge shall allow the patient to examine the clinical record or a copy of it.

"(4) Within seven days after the patient makes a request to examine the clinical record, the officer in charge, upon the advice of the attending physician, may apply to the review board for authority to withhold all or part of the clinical record.

"(5) An officer in charge who applies to the review board under subsection (4) shall give to the patient notice in writing of the application and the ground it is based upon.

"(6) Within seven days after receiving an application under subsection (4), the review board shall review the clinical record in the absence of the patient and by order in writing shall direct the officer in charge to allow the patient to examine the clinical record or a copy of it unless the board is of the opinion that disclosure of the clinical record is likely to result in,

"(a) serious harm to the treatment or recovery of the patient while in treatment at the psychiatric facility; or

"(b) serious physical harm or serious emotional harm to another person.

"(7) The patient and the attending physician may make submissions to the review board before it makes its decision.

"(8) The review board shall hear any submissions from the attending physician in the absence of the patient.

"(9) The review board may hear any submissions from the patient in the absence of the attending physician.

"(10) Where the review board is of the opinion that disclosure of a part of the clinical record is likely to have a result mentioned in clauses (6)(a) or (b), the review board shall mark or separate that part and exclude it from the application of the order.

"(11) Where the review board is of the opinion that a part or all of the clinical record should not be disclosed to the patient, it shall by order in writing permit the officer in charge to not disclose the record or part and it shall specify in the order the ground under which disclosure is refused.

"(12) Sections 33, 33a, 33b, 33c, 33d, 33e and 33f and the Statutory Powers Procedure Act do not apply to an application under subsection (4).

"(13) A patient who is allowed to examine a clinical record is entitled to,

"(a) request correction of the information in it where the patient believes there is an error or omission in it; and

"(b) require that a statement of disagreement be attached to the clinical record reflecting any correction that was requested but not made.

"(14) A patient determined to be not mentally competent for the purpose of this section or section 29 may apply in the prescribed form to the review board to inquire into whether the patient is not mentally competent.

"(15) Sections 33, 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (14).

"(16) This section does not apply to a clinical record or a part of a clinical record that was prepared before September 1, 1986."

I am advised that bell is for a vote. It is not a quorum call. Perhaps we should recess.

The committee recessed at 4:26 p.m.

5:21 p.m.

The Acting Chairman: When we left off, Mr. Callahan had read motion 13. Is there discussion on that motion?

Ms. Gigantes: I am not certain whether I should be addressing motions to 13 before it passes. I should, should I not?

The Acting Chairman: Perhaps you could answer that question yourself in that you asked it of yourself.

Hon. Mr. Scott: To be fair to Ms. Gigantes, she has her own

amendments that deal with this general subject. You may want to refer to those before we call the vote on this one.

Ms. Gigantes: That is right. I think they should be put as amendments to this.

Hon. Mr. Scott: They are not amendments. Perhaps the thing to do is to debate this. If it is defeated, we will know why.

Mr. Callahan: Are the amendments Ms. Gigantes speaks of amendments to the government amendments or are they amendments to the act?

The Acting Chairman: They are amendments to the act. If Ms. Gigantes can find them and give us the numbers--

Hon. Mr. Scott: They are both.

Ms. Gigantes: Yes, they are.

Hon. Mr. Scott: She has amendments, as I understand it, which are inconsistent with this amendment. She also has amendments which she would like grafted on this amendment.

Ms. Gigantes: That is correct.

The Acting Chairman: As usual, I am wrong.

Hon. Mr. Scott: There is an added reason for it to be dealt with separately.

Mr. Callahan: The inconsistent ones cannot be added as amendments.

The Acting Chairman: Mr. Partington, did you have a comment on the point of order.

Mr. Partington: I have a question of the Attorney General.

The Acting Chairman: We are dealing with the point of order first. That is where you decide the procedure.

Is it worth while going through motion 13 clause by clause and, as and when points arise that Ms. Gigantes wishes to amend, she can deal with them in that order?

Mr. Callahan: Can she tell us which ones deal with the act as it stands and which ones deal with the amendment that is proposed by the government? I think the procedure part would be to deal with the amendments to the act first. Any that are inconsistent with the government's amendment should actually be new motions.

The Acting Chairman: Yes, that is what I am saying.

Mr. Callahan: I do not think they can, with respect. I think if they are inconsistent with an amendment, they have to be new motions.

The Acting Chairman: We are going to do as I suggested. We will go through 13 clause by clause and where Ms. Gigantes has amendments to those clauses, she can graft them on and deal with them in reverse order. Everyone understand that procedure. Are you satisfied with it?

Dealing with subsection 29a(1), which has been read by Mr. Callahan, are there any discussion on that subsection?

Hon. Mr. Scott: I think Ms. Gigantes has an amendment on that.

Ms. Gigantes: You are very kind.

The Acting Chairman: Perhaps you could move your amendment, Ms. Gigantes.

Hon. Mr. Scott: It amends subsection 31(3d) of the bill by inserting after "examine"--

Ms. Gigantes: Subsection 29a(3)?

The Acting Chairman: Amendment 15. Perhaps you would read it.

Ms. Gigantes: If I could read it, I would read it. I do not know what you guys are talking about.

Hon. Mr. Scott: It is subsection 29a(1), which becomes "examine" "and copy" the clinical records.

The Acting Chairman: Order, please. Perhaps you could read your formal motion, which is 15, which would constitute an amendment to subsection 29a(1).

Ms. Gigantes: I move that proposed subsection 29a(1) of the act, as set out in the government motion amending subsection 31(3d) of the bill, be amended by inserting after "examine" in the third line "and copy."

The Acting Chairman: Thank you. Any discussion.

Ms. Gigantes: All that is being asked for with the amendment is that the person who is competent and is allowed to examine his clinical records shall not only be able to examine but shall also be able to copy the records.

Hon. Mr. Scott: The Ministry of Health opposes the amendment because many of these files and records are extraordinarily large. While we do not object to examining or indeed copying, the potential expense of copying is absolutely enormous. Therefore, we oppose it. If you want to say "copy at his own expense" then that is something, but this is a section that is designed to permit absolute access within the parameters of the thing. If it also calls for absolute copying at the patient's request, we are into a very extensive and expensive item.

Mr. D. R. Cooke: In proposing this amendment, the ministry is accepting the concept of examining one's clinical records. I wonder whether there is not a danger in having the examination permitted when copying is not permitted, which would result in some circumstances where there is a misreading of the records and the patient then goes on to assume something that perhaps he or she would not assume if he or she had a copy. It sounds as if the minister is prepared to accept an amendment that would read "and copy at his own expense."

Hon. Mr. Scott: "His or her own expense."

Mr. D. R. Cooke: I wonder whether the mover would be prepared to amend her amendment.

Ms. Gigantes: You can amend it, if you like, yes.

Mr. D. R. Cooke: All right. I move an amendment to the amendment to read "examine and copy at his or her own expense."

The Acting Chairman: Does everybody understand that wording? Is there any discussion on the amendment to the amendment?

Ms. Baldwin: From our point of view, it would be of some assistance if Mr. Cooke's motion was phrased "at the patient's expense" rather than "his or her" because this is a "his" act.

The Acting Chairman: Would you be prepared to amend your motion to that effect?

Mr. D. R. Cooke: My motion then should read, "entitled to examine the clinical records at the patient's own expense."

The Acting Chairman: Is everybody satisfied with the wording? Is there any discussion on that?

Mr. D. R. Cooke: I have already spoken to it.

The Acting Chairman: Anyone else?

Mr. Warner: All right. I will support the amendment, although it has always been a general principle with me that access to documents is without reference to costs to the individual who is seeking the documents. I think that is a good principle to follow. None the less, I will support that. If I understand the procedure here, I will still have an opportunity to discuss the amended amendment in the next round.

5:30 p.m.

The Acting Chairman: If Mr. Cooke's motion passes, yes.

Are we ready for the question?

Mr. Warner: Or fails.

The Acting Chairman: Are we ready for the question? Does everyone understand Mr. Cooke's motion? All in favour? Opposed?

Motion agreed to.

The Acting Chairman: Our next discussion is on Ms. Gigantes' amendment, as amended.

Ms. Gigantes: Very simply, what we are doing in this section is giving rights that otherwise would have been provided in Bill 34. In Bill 34, one has access to copies. It is not clear what the expense is going to be for the person getting access to copies. That still has to be worked out in Bill 34. I suspect in this case that the number of records a patient would wish to copy will be very few, and so the expense, quite contrary to what the Attorney General has just said, is likely to be very low. Therefore, I am not pleased there is a chance to see the amended amendment go ahead. I point out that it is a right to have a copy, and that would have existed in Bill 34.

Mr. Warner: I am a little puzzled by the Attorney General's response, because what exists in the government amendment is an either-or situation. Either the patient examines the record or is entitled to a copy. That is the government's amendment. At least, that is the way it reads.

Hon. Mr. Scott: No. That is not the way I would read it. The patient can examine the clinical record or a copy of it. It is conceivable the original record will not be at the hospital for some reason, but a copy of it will be. Hospitals use copies of records in place of the originals from time to time, and the patient should not be put to the trouble of being denied access to a copy of the record because the original is required to be produced and it is at the other end of the province.

Mr. Warner: Okay. I did not read it that way. I am glad you have clarified that for me. You are not opposed to the notion of the person being able to obtain a copy. It is that you are concerned about the potential cost factor involved for copying records.

Hon. Mr. Scott: Yes.

Mr. Warner: This concern is alleviated by adding the phrase "at the patient's own expense." Is that right?

Hon. Mr. Scott: Yes.

Mr. Warner: Good.

The Acting Chairman: Is there further discussion? Can we vote on that?

Mr. D. R. Cooke: To clarify a point, I think I misstated myself. What I meant to say was, "if competent, is entitled to examine and copy at the patient's expense the clinical records of the patient's observations," etc. I think that is clear in the draft.

The Acting Chairman: Perhaps it will assist if the clerk could read back the motion as now amended, and we will vote on Ms. Gigantes' amendment, as amended. Could we read it first so we know what we are talking about?

Clerk of the Committee: "That proposed subsection 29a(1) of the act, as set out in the government motion amending subsection 31(3d) of the bill, be amended by inserting after 'examine' in the third line 'and copy at the patient's own expense.'"

Mr. Callahan: This may be nitpicking, but unless there is going to be some regulation that will set a regularity in what the expense is, we could have a real conundrum as to who charges what. I imagine that could be done by regulation.

Hon. Mr. Scott: I do not think it is a question for the bill.

The Acting Chairman: Is there any further discussion? Are we prepared to vote?

Motion agreed to.

The Acting Chairman: Is there any further discussion on the subsection, as amended twice? Are you ready to vote on the subsection? Is there any discussion? Shall subsection 29a(1) pass, as amended?

Motion agreed to.

The Acting Chairman: Are there discussions or amendments on subsection 2?

Hon. Mr. Scott: To be consistent, subsection 2 should read, "A patient seeking to examine or copy a clinical record." Perhaps we could have some member move that amendment.

Ms. Gigantes: Why would that be necessary? Surely, if you are going to copy it, you are going to have to examine it first to know what you are copying, especially if you are paying for it.

Hon. Mr. Scott: Not necessarily. A patient may simply desire a copy of it and will examine it after the copy has been obtained. The purpose of subsection 2 is that there will be a documented request so that we can measure the compliance of the hospital.

The Acting Chairman: The question arises, should we put the same wording as in subsection 1 or "copy at the patient's expense..."?

Hon. Mr. Scott: I do not think you have to add "at the patient's expense..." That will be read by referring back. You could just add the words, "or copy."

The Acting Chairman: Mr. Cooke moves that the words "or copy" be inserted after the word "examined" in the first line.

All in favour? Opposed?

Motion agreed to.

Hon. Mr. Scott: Ms. Gigantes has actually moved that.

The Acting Chairman: Do you have an amendment to subsection 3, Ms. Gigantes?

Hon. Mr. Scott: Before the member moves it, her amendment is "and copy", which was appropriate earlier. Perhaps "or copy" is now appropriate, if I can suggest that.

The Acting Chairman: Would you accept that change and move your amendment, Ms. Gigantes?

Ms. Gigantes moves that proposed subsection 29a(3) of the act, as set out in the government motion amending subsection 31(3d) of the bill, be amended by inserting after "examine" in the second line "or copy."

The Acting Chairman: Is there any discussion?

All in favour?

Motion agreed to.

The Acting Chairman: Ms. Gigantes moves that the proposed subsection 29a(4) of the act, as set out in the government motion amending subsection 31(3d) of the bill, be amended by striking out "seven" in the first line and inserting in lieu thereof "three."

Ms. Gigantes: The purpose of that is to shorten the period to make a decision on whether access will be immediately granted from seven days, as proposed in the government's subsection 4, to three days. It appears to me that it would certainly be possible within three days to consult with the attending physician, if that were necessary, and to make the decision so the patient is aware, as quickly as possible, whether he will be given immediate access.

Hon. Mr. Scott: The Ministry of Health is opposed to this requirement. What is contemplated is that within the period the examination of the file will take place and an application made to the review board. If there is a weekend--and heaven forbid, a long weekend--where the application is made on a Friday or on a Saturday, it simply will not be possible to meet that time constraint.

Ms. Gigantes: I do not understand this problem if an application is made by a patient on Friday of a long weekend and you would ask for a decision by Monday.

Hon. Mr. Scott: What would have to be done in the interval is that the physician, or whoever is going to advise the officer as to the desirability of making an application, will have to come in and read the relevant portions of it, then have to make a judgement and will then further have to make the application to the review board. It is not simply deciding to make the application and actually making the application, all within the time frame. It is important that all those things should be within the time frame, but it is just that three days is really too short, in the opinion of the Ministry of Health.

Ms. Gigantes: In the application process, and here I am thinking of the person who makes the decision--

The Acting Chairman: May I interrupt. That bell indicates that there is another vote in the House and I therefore accept Mr. Callahan's motion to adjourn to the House.

Mr. Callahan: Maybe in the interim we could think about four business days as an alternative.

Hon. Mr. Scott: Maybe our Conservative colleagues can tell us whether there is any rush to move to the House.

Mr. Villeneuve: It is your amendment.

Hon. Mr. Scott: It is a Liberal amendment. That is true.

The Acting Chairman: I am advised by the clerk that the standing orders require that we recess.

The committee recessed at 5:41 p.m.

5:20 p.m.

Mr. Chairman: We now have representatives from each of the three parties. The amendment presented by Ms. Gigantes removes the seven days in the government's proposal and reduces that to three days. Are there any other speakers on this issue?

Mr. Partington: I find difficulty with the amendment to reduce to

three days. There are times when there may be four or five nonbusiness days in a row, days that are holidays. A good example is the Christmas season where Monday might be Christmas Day and Tuesday, Boxing Day. You would have only one day to do some work. I think seven days is a reasonable period and does not cause unnecessary delay in obtaining copies.

Mr. Chairman: If you are ready, I will call the vote on Ms. Gigantes's amendment to reduce the seven days to three.

All in favour of the motion? Opposed?

Motion negatived.

Mr. Chairman: To the members who are just arriving, we have defeated the amendment proposed by Ms. Gigantes, which was to reduce the number of days from seven to three. Seven therefore stands.

Ms. Hart: Do we need an amendment to "examine or copy," Mr. Chairman?

Mr. Chairman: Had that been moved earlier? I have just assumed the chair so I am not sure.

Ms. Hart: Perhaps I could propose my amendment to subsection 4 before we vote on it.

Mr. Chairman: Ms. Hart moves that subsection 4 be amended to include after the word "examine" in the second line the words "or copy" to make it consistent with the previous subsections which included the same wording.

Motion agreed to.

The committee adjourned at 6:29 p.m.



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
MONDAY, JUNE 9, 1986

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Turner, J. M. (Peterborough PC) for Mr. Villeneuve

Also taking part:

Haggerty, R. (Erie L)

Clerk: Mellor, L.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Ward, C. C., Parliamentary Assistant to the Minister of Health (Wentworth North L)

Sharpe, G., Counsel, Legal Services Branch

Mauro, D., Director, Mental Health Operations Branch

From the Ministry of the Attorney General:

Ewart, J. D., Director, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 9, 1986

The committee met at 3:54 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

On section 31:

Mr. Chairman: Members of the committee, we have a quorum so we can get started. We will pick up at subsection 29a(5) of the act as set out in the proposed subsection 31(3d) of the bill.

Mr. Warner: I have a minor thing, the actual wording of the last line. Perhaps it should read "and the ground upon which it is based."

Mr. Chairman: Are you amending the amendment?

Mr. Warner: I am asking counsel whether that would be more agreeable wording.

Ms. Gigantes: It is wording up with which we cannot put.

Ms. Baldwin: Mr. Warner, it is a drafting issue. In instances such as this, we often use phraseology that, strictly speaking, some might find grammatically a little incorrect. It is clearer and easier to read and corresponds more closely with the way people actually speak. That is why it was drafted in that way. I do not have strong feelings one way or the other.

Mr. Warner: Winston would cringe. I prefer it be worded that way, but I do not want to cause great anguish among the committee members or the drafters.

Mr. Chairman: It would really disturb me if you spent sleepless nights over this. I want to be as accommodating as the chair can possibly be. What is the wish of the other members of the committee with respect to the grammatical restructuring of subsection 5? Do we have any English majors here who would like to make--

Ms. Gigantes: Yes.

Mr. Warner: Me.

Interjection.

Ms. Gigantes: We have three. We may have a quorum of English majors here. Chris is an English major, too.

Mr. Chairman: As a committee, would you like to send it back for

rewriting with the same thought expressed in subsection 5, but restructured? It appears from what I heard that it can be done without great difficulty. Then Mr. Warner will not spend sleepless nights worrying about the grammatical structuring of subsection 5. Is that agreed to by the committee?

Mr. Polsinelli: Why do we not just deal with it? We all have a rudimentary knowledge of the English language.

Mr. Chairman: All right. Can I read to you the wording that would replace what we have?

"(5) An officer in charge who applies to the review board under subsection 4 shall give to the patient notice in writing of the application and the ground upon which it is based."

Do I get an A for that?

Mr. Warner: You do.

Mr. Chairman: Thank you.

Mr. Warner: You are at the head of the class; E for effort.

Mr. Chairman: Okay. Let us take that as a motion to amend by Mr. Warner. If we are all in agreement, I will ask for subsection 5 to be carried. Is there any other comment on subsection 5? Carried.

We will go to subsection 29a(6).

Mr. Chairman: Ms. Gigantes moves that proposed subsection 29a(6) of the act, as set out in the government motion amending subsection 31(3d) of the bill, be amended by striking out all of the words after "record" in the eighth line and inserting in lieu thereof "would result in a substantial risk of serious bodily harm to a person other than the patient."

I will give the committee a moment to digest Ms. Gigantes's amendment. Are there any comments?

Mr. O'Connor: Is this found in motion 15?

Ms. Gigantes: It is found in the package of motions. At the bottom it says, "Replaces motion No. 15, in part." In effect, it does.

4 p.m.

Ms. Gigantes: I do not know where the "would" comes from in the motion I have just placed before you. I do not see it in the government motion. The government motion reads "clinical record is likely to result in." I believe the motion should read--no, it is correctly worded. The board would have to be of the opinion that disclosure of the clinical record "would result in a substantial risk of serious bodily harm to a person other than the patient." Essentially, it substitutes that test for the test set out in the government motion in clauses 29a(6)(a) and (b).

This amendment would set up the same test in looking at whether a patient should have access to his clinical record as is set up in the test deciding whether the patient shall become an involuntary patient, suggesting that the only inhibition would be serious bodily harm to a person other than

the patient. It does not suggest serious bodily harm to the patient himself because that would be nonsense.

It does suggest we should not be looking at a doctor's or an officer's judgement of whether looking at the clinical file is going to impede the recovery of the patient while in treatment at the psychiatric facility, or of whether access to the clinical record might create serious emotional harm to another person.

The evidence we have from the two studies of access to clinical records by psychiatric patients--both studies were done in the United States over long periods of time--has been that access to such records does not inhibit the treatment or recovery of the patient, and may in many cases contribute to the treatment and recovery of the patient. Second, we would have to rack our brains to think of a serious example where we could say that serious emotional harm to another person might be created if a psychiatric patient had access to his own record.

The examples of this raised in some of our discussions have been of pieces of information given by a family member to a treating doctor or to a psychiatric facility that had to do with some perhaps repressed relationship the patient had with a member of the family. I am thinking of something such as incest. In the cases where access to clinical records has been given, we know there has been no indication of this kind of situation arising. As usual, it is very difficult to prove that a negative is not true.

I am asking that the committee consider the positive and consider the benefits to the patient, and also consider that were psychiatric patients covered by Bill 34 and were they to have access to clinical records on the same basis as other members of the public have access to their personal files, this question would not arise. I suggest we make one test and that is the existence of the risk of serious bodily harm to a person other than the patient.

Mr. Chairman: So that we understand it and to clarify it, the effect of Ms. Gigantes's amendment will be to clear off clauses (a) and (b) in that subsection. Also, I do not think it is a contentious point, but perhaps after the amendment to the amendment is dealt with, Ms. Hart may wish to move in subsection 29a(6), as she has done previously, after the last line on the first page where it reads, "to allow the patient to examine," "add the words"--this is the amendment I am suggesting--"or copy." We have done that to be consistent with what we have been doing all along. Do not do it now, but when we get to that part, I will tidy up the wording by having you move the motion to add that and see whether the committee again reaches agreement on it.

Ms. Gigantes: We should be looking at this in the context of the equality rights provision of the Canadian Charter of Rights and Freedoms. Our concern, as it has been all the way through Bill 7, should be directed to the rights of the individual. The government amendment in essence says we should protect persons other than the person directly affected by this legislation from serious emotional harm.

It is important for us to look, for example, at the psychiatric patient's right to know what is in his or her personal clinical records in a psychiatric facility, quite distinct and apart from something as nebulous as something called "serious emotional harm to another person," who is probably a member of the family. If members of families are to be protected, they should

be protected in their own right, not by providing for a constraint on the rights of the patient, who is the person we are dealing with.

Mr. Chairman: The parliamentary assistant to the Minister of Health wishes to make a comment with respect to the government's position on this matter.

Mr. Ward: Subsection 29a(6) before you is consistent with the recommendations of the Krever Royal Commission on the Confidentiality of Health Records in Ontario, and thus we will not be supporting the amendment.

Mr. O'Connor: I have a comment and question for Ms. Gigantes. You made the comment that the government amendment seems to be concerned with the emotional health and physical wellbeing of other people. Surely, the person most at risk and for whom we should have the most concern is the patient. To remove clause (a) would open up the possibility of harm being done and inhibiting the doctors in their treatment of the patient.

Is there not some way we can maintain that protection by leaving it to the discretion of the doctors to provide their expertise and to presume their interest in the best possible quality care for the patient? Why would you want to remove that right, that interest they have in the patient, by limiting the subsection, as your amendment would do, to a criterion that deals only with "serious bodily harm to a person other than the patient"?

4:10 p.m.

Ms. Gigantes: I will be pleased to answer that. There is nothing now to prevent the treating doctor from disclosing a psychiatric file or record to a patient. They do not do it and we know why. It is for the same reason educators did not show personal records to students or to members of students' families. They look upon those files as their files and upon their treatment of a patient as something which will not be questioned, certainly not by the person being treated.

It is elemental. If we look at the government amendment, we have left the current practice essentially untouched, because in both clauses 29a(6)(a) and (b) it is up to the doctor to make the decision whether the file will be disclosed. The context in which he can make that decision is a very wide one. You know that in practice; I know that in practice. If we do not want to amend this, we are not changing anything. There are not going to be any clinical files shown to any psychiatric patients under this change, and it is all cosmetic. If we leave (a) and (b) there, it is not going to happen.

Mr. Ward: The disclosure of that information is subject to review by the board, whereas it was not previously. I do not accept that the changes are only cosmetic or solely at the discretion of the physician and the hospital.

Mr. O'Connor: I would comment briefly that you are imputing motives for the physician, that the withholding of the information on file is for reasons other than the best medical interests of the patient. The person who is in the best position to make that decision and judgement surely is the patient's physician.

Ms. Gigantes: You forget about the patient.

Mr. O'Connor: Can we not start from the premise that the doctor has the best interests of the patient in mind when making any kind of decision about his case?

Ms. Gigantes: Yes. Every institution that holds records on any one of us in this province comes forward and tells us, under Bill 34, it is for purposes of serving us best that they keep information confidential. You are familiar with that. The medical people or the psychiatric practitioners in this province are no different from any of the rest of us. It is always very convenient in the carrying out of professional activities to practise away from scrutiny as much as possible, and I do not mean only medical practice. That is a fact. It would be easier for you and me to do our jobs too if we did not have to go to an election every few years. I am not kidding.

Mr. Turner: I do not know if that is true.

Ms. Gigantes: There is not one practising profession or institution that will come before members of this Legislature and say, "bill 34 is great in principle, and we like the way it is going to make us disclose things to the people whose records we hold on file." They all come before us and say, "In principle, we like access to information and we like people being able to get access to their own personal records, but in practice, do not apply it to us."

That is what the psychiatrists say. It is what the doctors and the hospitals say. I am not surprised and you are not surprised. We know what human beings are, and we know how they work in groups.

While the minister's parliamentary assistant has been kind enough to remind us that in the government amendment we will have review by a review board, it will be within the context of this legislation. That means clauses (a) and (b). Where a doctor has made a judgement it is going to be a serious impediment to the treatment and recovery of a patient; he will be witness to that before the review board, and it will be something the board will have to accept. How can they question it? If the doctor says it, how are they going to be able to question it?

Mr. O'Connor: Are you asking me?

Ms. Gigantes: Yes.

Mr. O'Connor: My thought is that these are experienced psychiatrists on the review board.

Ms. Gigantes: No. They are going to be lawyers and--who else is going to be on the review board?

Mr. O'Connor: They will be experienced people, including psychiatrists, who will have knowledge of this area.

Ms. Gigantes: They are not going to be any more experienced than you and I.

Mr. O'Connor: They will make an objective decision about whether it will be harmful to the patient. If it is not, they will allow the release of that material.

Ms. Gigantes: As a practising lawyer, if you were a member of the review board, would you question a psychiatrist who came in and said, "Disclosing this clinical file is going to be of serious harm to the treatment of this patient; it is going to prevent his recovery at this psychiatric facility"? You would take his word because it is in the law. You have to pay attention to that.

Mr. O'Connor: The psychiatrist would have to go a lot further than just stating it to make his case. He would have to argue how it would be harmful to the patient, and convince the board that it would be. I assume that the board's bias in these cases will be towards disclosure or releasing the file. He will have to make a case because he is applying not to.

Ms. Gigantes: I do not think we are making a very serious attempt in the government motion to reinforce any such bias.

Mr. O'Connor: Especially if there are lawyers on the board. To take exception to some of your earlier comments, the legal profession has always been of the attitude, and instructs us through its canon and ethics, that the files we hold on clients are not ours. They specifically belong to the client. If the client has paid his bill, he is entitled to the full file.

Mr. Chairman: Oh, there is a catch.

Mr. Turner: There is always a catch.

Mr. Chairman: There is a member with a supplementary who has been extremely patient in waiting to get a comment on the floor. I will now turn to Mr. Polsinelli. I then have Mr. O'Connor, and Mr. Callahan is also waiting.

Mr. Polsinelli: I have one question for Ms. Gigantes. Perhaps it will gel the issue in my mind. Are there any situations you can imagine where the disclosure of the clinical records to the patient would pose harm to the patient in terms of his physical or emotional recovery?

Ms. Gigantes: No. Furthermore, the two studies in which we have been given documentary evidence, which has been placed before us by the people who know the studies, indicate that to prove this negative, while difficult, is not impossible. It has been done in two clinical studies over long years of practice.

Mr. Polsinelli: Would you agree that this opinion varies from the opinion of some of the psychiatrists working in the system at present?

Ms. Gigantes: I would be astounded to learn otherwise.

Mr. Polsinelli: Would you not agree that it is not a simple issue? It is not a clear case of a section 15 infringement, and perhaps it should be left in the hands of the professionals reviewing the issue.

Ms. Gigantes: It would be left in the hands of the professionals reviewing the issue under my amendment, but I would not say in legislation that what they should be reviewing is the potential for serious emotional harm to another person, or serious harm to the treatment and recovery of a patient in a psychiatric facility. Does that answer your question?

Mr. Polsinelli: Yes, it answers the way you feel on the question. I do not agree with you.

Mr. Chairman: If you have completed your questions, Mr. O'Connor, I will go to the member for Brampton (Mr. Callahan).

Mr. Callahan: I have nothing to say. I would like you to call the question.

Mr. Chairman: Was that it? I am quite prepared to call the question when all the speakers on this issue have been exhausted. Go ahead, Mr. Warner.

Mr. Warner: I have two items. Much of what Mr. O'Connor says would be entirely logical if we were operating without knowledge of how it is possible to make records available upon request and not have anything horrible happen.

You recall the information provided to us about the hospital in Washington, District of Columbia. There were thousands of patients over a long period of time. They expected that some chaos would be created, but it did not occur.

In a sense, it should not be a surprise. Traditionally, if you think back a long way, whenever we have held back information in the belief that releasing it would cause problems, and then have subsequently relaxed the rules, horrible things did not happen. If you look at every particular area of our society where that has happened, we have had positive, not negative, results.

4:20 p.m.

Second, and probably even more important, is the context in which emotion is placed. That is the principle of the bill. Surely it is part of the fundamental principle that under our Charter of Rights and Freedoms an individual has certain rights and freedoms, one of which is to see a record.

There are certain qualifiers on it. My colleague has chosen to add a qualifier if it is going to bring harm to another person--

Ms. Gigantes: Physical harm.

Mr. Warner: --physical harm to another individual. That is the qualifier. As long as you do not meet that criterion then you are able to see your record. From the evidence we have presented before, at least in Washington over quite a few years, it did not pose problems. I do not think it is a monumental task for us to support my colleague's amendment.

Mr. O'Connor: I simply do not agree that the government's amendment is going to inhibit the release of information and files to patients. Two things are occurring and will occur to promote a substantial amount of communication and release to patients. One is the changing attitude of people in general, and perhaps of professionals, because of freedom of information laws around North America and because of our discussions here and under Bill 34. Second, as has been pointed out by Mr. Ward, there will now be a committee review of these decisions which I am sure, after an initial spate of decisions in favour of release, will promote that kind of attitude among the psychiatric profession.

It is necessary to have some legislation which, in those rare cases where it would promote or cause serious harm to the treatment or recovery of the patient, leaves with the doctor the bottom-line authority to not release if he seriously thinks it is not in the best interests of the patient. On balance, we are going to get a considerable amount of release as has happened in Washington. There will be compliance with the spirit of the Charter of Rights and Freedoms because of those factors.

Mr. Partington: In support of the government amendment, whether or

not a treatment or procedure is harmful to a patient is vital to the practice of psychiatric medicine and the Mental Health Act. That is a consideration that has to be taken into account and, in taking it into account, we must recognize two things. First, doctors basically operate out of good faith and with good judgement. Second, in those situations where that judgement might be called into question, we will have a review board of objective, independent, particularly informed and experienced individuals who, as Mr. O'Connor says, over a period of time and from the beginning, will make those right decisions. It is important for the protection of the patient that clause (a) be left in the act.

Mr. Polsinelli: While we are having this discussion, it should be pointed out that once the patient leaves the psychiatric facility, he will have full access to his file and there will be no impediments on his obtaining that file.

Mr. Chairman: Final comment, Ms. Gigantes.

Ms. Gigantes: What is the current policy concerning patients in provincial psychiatric institutions who want access to their clinical records?

Mr. Sharpe: If the patient asks for the record in the context of a pending review board hearing, the policy is to grant access subject to the kinds of harmful concerns that are set out in the amendment. If you are talking about patients in general asking to see their records, there is a discretion, of course, in the administrator but there is no firm policy. The practice has been not to provide them with the record itself but rather to provide them with some information. In law, a right to information is part of the obligation to provide a patient with proper information to get an informed consent.

The notion of hospitals is that the manner with which the information is imparted is within the control of the hospital and the physicians. It may be by providing access to the record. It may be by giving them a report or summary of their condition or answering their questions.

Ms. Gigantes: I want to point out very briefly to members of the committee that, in this government motion, we are dealing with a competent patient, always. We are not dealing with an incompetent patient. My amendment asks you to allow each competent patient access to his or her clinical record, unless it would result in a substantial risk of serious bodily harm to a person other than the patient. It is a competent patient you are dealing with.

Mr. Chairman: We have had considerable discussion on Ms. Gigantes's proposed amendment. I will now, with your agreement, call that amendment.

All those in favour of the amendment? Opposed?

Motion negatived.

Mr. Chairman: Members of the committee, before we carry on, Mr. Ward has been called away for probably 10 or 15 minutes. Is it the committee's wish that we continue in his absence, or do you wish to adjourn for 10 or 15 minutes until he returns? He will be back as soon as he can. It would be my recommendation to you that we continue, and if there is anything Mr. Ward was required to do in his absence, we will simply catch up when he returns. Is that agreed?

Agreed.

Mr. Chairman: We will not be here with a government representative, then, for a few moments. We can now go on to subsection 29a(6).

Ms. Hart moves that proposed subsection 29a(6) of the act, as set out in the government motion amending subsection 31(3d) of the bill, be amended by inserting the words "or copy" after the word "examine" in the sixth line.

Mr. Callahan: Could we have the number at the top of the page?

Ms. Hart: It is 13.

Mr. Callahan: Is this the new stuff you just told me about?

Ms. Hart: No, it is not the same.

Mr. Chairman: It is what we have been doing all along.

All in favour of the amended motion?

Motion agreed to.

Subsection 29a(6), as amended, agreed to.

Subsections 29a(7) to (12), inclusive, agreed to.

Mr. Chairman: Is subsection 29a(13) carried?

Clerk of the Committee: No. That one has a clause 13(a).

4:30 p.m.

Mr. Chairman: Sorry. There is a 13(a). We need another "or copy" in there, Ms. Hart.

Ms. Gigantes moves that the proposed clause 29a(13)(a) of the act, as set out in the government motion amending subsection 31(3)(b) of the bill, be amended by striking out "and" in the third line.

She further moves that the proposed clause 29a(13)(b) of the act, as set out in the said motion, be amended by inserting after "made" in the fourth line "and."

She further moves that subsection 29a(13) of the act, as set out in the said motion, be amended by adding thereto the following clause:

"(c) require that notice of the amendment or statement of disagreement be given to any person or organization to whom the clinical record was disclosed within the year before the amendment was requested or the statement of disagreement was required."

Ms. Gigantes: That amendment would bring this new section concerning clinical records and access thereto by patients into line with Bill 34 on freedom of information in that it would require that when a patient had asked for an amendment to be made to a clinical record and the amendment was approved, or when the patient had made a statement of disagreement to an element of the clinical record, that information or the statement of

disagreement should also be provided to anyone holding copies of that clinical record or who had been given the clinical record within the last year.

Mr. O'Connor: Very briefly, this amendment makes real sense. It completes the procedure that seems to be started by clauses 29a(13)(a) and (b) in that if the intent of these amendments is to correct errors that may creep into patients' records, it makes sense to complete the process by putting a notice of the disagreement in all places where the record is held or where it has been revealed to other persons.

I would ask Ms. Gigantes for some comments on why she has chosen the time period of a year prior to the time when the amendment was requested. Why not open it up to any time when the statement has been put on the record? Is there any magic in the year?

Ms. Gigantes: No, I do not think there is, but it is possible it would be difficult to track down records that had been held for, or given longer than, a year before. If a patient is going to be in continuing treatment, this would probably cover the active participants in that treatment.

Mr. Polsinelli: I question why Ms. Gigantes would want the word "and" removed after clause (a).

Ms. Gigantes: I was afraid you were going to ask me that.

Mr. Chairman: Because you are adding clause 29a(13)(c), the "and" goes after clause (b).

Mr. Warner: The "and" has to be removed from clause 29a(13)(a) and placed at the end of clause (b) in order to add a third section.

Ms. Gigantes: Yes. I appreciate the assistance.

Mr. Chairman: The chair is always willing to assist wherever possible, Ms. Gigantes. That is what we are here for: to be helpful. Does that satisfy your query, Mr. Polsinelli?

Mr. Polsinelli: Yes, it does.

Mr. Chairman: From the appearance of the committee at this point, you are ready to vote on this one. Shall the amendment proposed by Ms. Gigantes carry?

Motion agreed to.

Mr. Chairman: I am now going to ask Ms. Hart to move another amendment that is a housekeeping amendment.

Ms. Hart moved that subsection 29a(13) of the act, as set out in the proposed subsection 31(3d) of the bill, be amended by inserting after the word "examine" the words "or copy."

Motion agreed to.

Mr. Chairman: Shall subsection 29a(13), as amended, now carry?
Carried.

Shall subsection 29a(14) carry? Carried.

Subsection 29a(15)?

Ms. Gigantes: I move that proposed subsection 29a(16)--

No. Go ahead; carried.

Mr. Chairman: I will call for subsection 29a(15) again. Carried.

Ms. Gigantes moves that proposed subsection 29a(16) of the act, as set out in the proposed subsection 31(3d) of the bill, be struck out.

Ms. Gigantes: This subsection says that people can look at their clinical files once they have passed all the tests we have provided for them earlier, but they can look at their clinical files only as they were written after September 1, 1986. This means that, unlike every other person in this province who would go through whatever test to see personal records under the freedom of information legislation we are dealing with now, psychiatric patients would be able to look only at files that were started on September 1, 1986. There is no such restriction on access to personal records for any other people in this province once Bill 34 goes ahead.

Mr. Chairman: Ms. Gigantes, you are moving that part of this amendment be struck completely, but you have an addition that you may wish to speak to at the same time because they are in concert, I believe.

Ms. Gigantes: Yes. I have replacements for them, but I would like to deal with that issue separately.

Mr. Chairman: All right. If you want to handle it that way, that is fine.

I am going to ask the ministry to comment on Ms. Gigantes's proposed amendment, which is to strike out that subsection. Would you comment now, sir?

Mr. Sharpe: The concern of the ministry--and I believe it was expressed by the Ontario Medical Association and possibly by the Ontario Hospital Association--was that the records that have been produced to date were produced under the old or current rules, rules that, as you know, place the discretion over whether the actual records are to be disclosed in the hands of those who produced the records. A great deal of concern was expressed about changing the rules so that the records affected would now be brought under access rules, whereas that was not the case when they were produced.

Mr. O'Connor: I tend to agree with Ms. Gigantes on this one. Surely the protection that is there for the doctors, or for the profession, if they need protection--perhaps that is the wrong word--is subsection 29a(6). Should that not be the only criterion? If it is likely to cause serious harm to the treatment or recovery of the patient or physical harm or serious emotional harm to another person, then they can make that case before the review board and it will not be revealed.

however, if that criterion, which should be the overriding and, in my opinion, the only criterion, is not met, I am not very concerned about minor embarrassment to psychiatrists who may have made offhand or gratuitous remarks that they now do not want to be made public. That is just too damn bad for them. The criterion is clearly set out in subsection 29a(6) and should be the only criterion.

4:40 p.m.

Mr. Sharpe: The concerns I heard the OMA make on this were more along the line that the record really is not just material produced within the hospital. It is a compilation of material collected from all kinds of other sources, including statements made by members of the family and so on. The decision about what to put in the record has been somewhat governed by the notion that producing it was within the hands of those compiling it. The Mental Health Act defines the record as a record compiled in the facility, not as a record produced in the facility. Again, I am reflecting the concerns expressed by physicians in hospital administration.

Mr. O'Connor: What are we trying to protect here, though? If the criterion as it is set out in subsection 29a(6) has to be met, what is to be gained by having the cutoff date? Whom and what are we trying to protect by setting a start date of September 1? Perhaps that is a rhetorical question.

Mr. Warner: Mr. Sharpe, you reiterated for us the concern that was expressed by the OMA and, you believe, by the OHA. You have had time to think about this one. Do you have any concerns from the viewpoint of the Ministry of Health about what the potential problem is in allowing patients who qualify under this act to see records that were in existence before September 1, 1986?

Mr. Sharpe: The tremendous administrative concern has been raised that whenever a request is made, the entire file will have to be reviewed by a physician. Some of these files, of course, are quite large. They have traditionally reflected a compilation of incredible amounts of material. From the position of the Ministry of Health, particularly in the institutions that are operated directly by the ministry, a great deal of additional medical staff time would be involved in reviewing these very large files to determine whether the test set out here would be met.

There was the additional concern, as I indicated earlier, that many family members would have expressed views with respect to the treatment of patients that would have been incorporated in the file. They would probably have been given certain assurances by medical staff that this material would be kept away from the patient and would be kept confidential. It might not necessarily be information directly affecting the current treatment of a patient, because the patient might have been discharged from hospital long ago, and it might not necessarily place the person in serious jeopardy.

Those are the concerns the ministry has had. I cannot speak for Mr. Ward, who is not here. I do not know what additional points he might want to raise.

Mr. Warner: Would it be reasonable to assume that if the Ministry of Health were involved in a court case, it might be expected to obtain whatever files it felt were important for court and would go to whatever lengths were permissible in order to obtain the maximum amount of material in preparing for a case? In that respect, it would become irrelevant whether it was before or after a specific date. It would attempt to obtain whatever material was relevant to the case. Is it reasonable to assume that?

Mr. Sharpe: It is reasonable, but with respect to the court process, an amendment carried in 1978 that, using essentially the same test as is set out in clauses 29a(6)(a) and (b), permits the withholding of information even from the court, even pursuant to a subpoena and even though the material is relevant and would otherwise be admissible, where there is the same type of potential concern relating to harm to the patient or to someone else.

The answer to your question is yes, any party in judicial proceedings would attempt to get almost any material it could that was relevant and helpful.

Mr. Warner: In that respect, we are willing to move mountains to solve whatever administrative problems might occur. What I always have difficulty with is trying to use administrative concerns as a way to block a principle. We deal with the principle first, and whatever mechanical problems exist, then we deal with those and find ways to solve them.

The principle here is fairly straightforward. If you follow the course of this bill, you will find that we have set out certain terms and conditions under which a person may obtain his files. Therefore, does it not logically follow that you should be able to obtain whatever files exist if you have qualified under the act to obtain files? We have introduced this arbitrary line, and I quite frankly think it runs counter to the principle of the bill.

Think about it for a minute. Putting in an arbitrary cutoff line really runs counter to the principle of the bill. If everything we have done up to this date has set out guidelines in order to qualify to see your files, then the principle has to be pretty straightforward and clear that you are now entitled to those files. There is not another qualifier put on that. We have put them all on the individual at the beginning.

I ask the members to consider seriously that accepting the government's motion the way it is worded, putting in the date of September 1, 1986, runs counter to the principle of the bill. It probably should be ruled out of order by the chairman, but my colleague has a handy way around that which saves embarrassment for the government by simply moving to delete it rather than embarrass the government by having it ruled out of order.

Mr. Chairman: If there is an inference of challenge to the chairman on the orderliness of the government's motion, I rule that it is totally in order for the government to propose what is before us. All of your remarks up until that point are perhaps appropriate to the argument you are raising, but the motion is not out of order.

Mr. Polsinelli: Unlike Mr. Warner, I find this a very difficult call to make. It is not as simple as he is making it out to be. In my opinion, we are effectively changing the rules of the game after the game has already been played. There may have been a number of situations in which a doctor obtained information on the understanding it would be kept confidential and not released to the patient.

I would like the benefit of comments by our Attorney General (Mr. Scott) on this amendment. I request that we stand this amendment down until our next meeting. I would like to think about it a little longer. I would like to consult and have the opinion of the Attorney General before the committee deals with this amendment. I move that it be stood down.

Mr. Chairman: All right. That motion is out of order at the moment. I will accept it in a moment, but Mr. Ward may want to make some embellishing remarks about the government's position, so I will turn to the parliamentary assistant, who will, no doubt, enlighten us completely on the intent of this amendment.

Mr. Ward: I do not think I can make any arguments on this bill that have not already been made by Mr. Sharpe, the legal counsel for the ministry,

other than to say that the amendments that were put forward do represent some movement in those areas. The suggestion not to place any limitations on the retroactivity would be unworkable in terms of opening up a review of old records ad infinitum.

4:50 p.m.

I also remind the members of the committee that Bill 7 does not represent the only opportunity for a review and overhaul of the Mental Health Act; I know this has been said before. There has been a considerable amount of consultation, not just with patients' rights groups but with the OMA, the professionals and the hospitals that are involved. I would refer you to the most recent newsletter of the Ontario Hospital Association which indicates its concern that the committee take this opportunity to change some of the recommendations that have been arrived at through consensus and through consultation and have had some concurrence along the way, but we now again make amendments on an ad hoc basis, not having gone through that extensive process.

If there are issues that the committee feels should be explored further, there will be a time and an opportunity for that. The amendment is one that will be resisted strenuously by the professionals involved and by those who have responsibility in this regard. I would suggest that the amendment not be supported at this time. Those issues can be reviewed when the Mental Health Act is before us at a later date.

Mr. O'Connor: I do not agree with Mr. Ward's final comments. This issue is clearly a Charter of Rights and Freedoms issue in that it deals with the rest of the subsections of this particular motion. It is properly dealt with by this committee and can be dealt with by this committee. In a private conversation with Mr. Polsinelli, I indicated that I would be agreeable to postponing debate on this until the Attorney General (Mr. Scott) was here. However, we have now heard from the government representative on the issue and, notwithstanding what I said to him, I would be content to vote on the matter today unless the committee feels strongly that we should hear from the Attorney General. I wonder what that will add to the debate in that the government's position has been eloquently put by Mr. Ward.

Mr. Chairman: It is Mr. Polsinelli's intent to place a motion to stand down this section until the Attorney General appears before the committee tomorrow. I will allow Ms. Gigantes to have the final word on the matter and while she is speaking you can make your decision as to whether you want to deal with it today or whether you want to stand it down.

Ms. Gigantes: Bill 34, which originally included access by psychiatric patients to their clinical records, was amended. It was amended for the purposes of including psychiatric patients' access to their clinical files in this review by Bill 7 of the Mental Health Act. In Bill 34, there was no time limit. In fact, psychiatric facilities and clinical records of psychiatric patients were being treated exactly like other institutions and other personal records held by the government in that, when a person had right of access to that personal record, there was no time limit on the date from which that right would become operative.

The problem with the suggestion that in September 1986 we start to allow psychiatric patients, if they qualify, to look at their personal records is that we are treating them, and the institutions which treat them, entirely differently from any other institution or any other persons in Ontario. It

does not sit with the Bill 7 equality rights context. Do not forget that everybody who works in the Ministry of Community and Social Services and whose files contain personal records on people, would like to make sure that people could not ask for their personal records except starting in September 1, 1986.

Everyone affected by Bill 34 would be pleased; every institution would be very pleased. Mr. O'Connor has said it as well as I can, that given the kinds of tests we have already put in this section, there is absolutely no reason that a right granted to every other person in relation to any other institution or institutional setting in Ontario should be denied to psychiatric patients.

Mr. Polsinelli: Ms. Gigantes makes a potent argument when it comes to her amendment to this subsection. Mr. O'Connor also makes a very strong argument with respect to the subsection. I am convinced by neither the subsection nor the amendment that has been put by Ms. Gigantes.

I would still like to postpone voting on this amendment. I would like to hear the opinion of the Attorney General and to canvass in my own mind the pros and cons and ramifications of changing the rules someplace down the road with respect to the Mental Health Act and the clinical records of patients. I do not like the idea, because at some point in acquiring information, doctors may have given assurances to individuals who gave them information that the information would be kept confidential. Then, through a swift stroke of the government pen, the legislation that initially protected the physician and psychiatrist is no longer there. If the committee is prepared to deal with this amendment, then we will have to deal with it today, but I would prefer to deal with it at our next meeting, and I so move.

Mr. Chairman: Mr. Polsinelli's moves that this amendment is held over and set down until tomorrow when the Attorney General is here.

All in favour of that motion? Opposed?

I assume Ms. Gigantes would vote to deal with it now, but she did not. Which way did you want to vote, Ms. Gigantes?

Ms. Gigantes: I am rather torn. I will vote to postpone it.

Motion agreed to.

Mr. Chairman: The matter is postponed. We will set aside both of those motions on Bill 31 which are proposed by Ms. Gigantes until tomorrow when the Attorney General is here.

Mr. Polsinelli: Mr. Chairman, is that tomorrow or next session?

Mr. Chairman: Tomorrow is the next session. The Attorney General will be here.

That is the way your motion will be worded, Ms. Gigantes. It will be resurrected and dealt with tomorrow.

Mr. O'Connor: Mr. Chairman, he will not be here tomorrow because there is no sitting tomorrow.

Mr. Chairman: No, I have been advised he is going to be here for an hour. During the hour he is here we will take this right off the top, with the permission of the committee members.

Mr. Polsinelli: Shall we be having a special sitting tomorrow, on Wednesday? The committee normally meets on Mondays and Tuesdays.

Mr. Chairman: We are going to be sitting tomorrow for at least the hour that the Attorney General is here.

Mr. Polsinelli: Mr. Chairman, I am losing track of the days of the week. When one works seven days a week without the weekend as a buffer, one loses track of whether it is Monday, Tuesday or Wednesday. I was under the misapprehension that today was Tuesday.

Mr. Warner: Today is Monday.

Mr. Chairman: There are some on this committee who have suggested from time to time that you did not know what day of the week it was, Mr. Polsinelli. I have defended you on all those occasions and indicated you did know what time of the day it was.

For the purpose of simplicity, it will be tomorrow during the visit of the Attorney General to this committee. He will be here for about an hour.

Ms. Gigantes, the clerk is asking whether you want to deal with the second part of your amendments; not the struck-down section, but the follow-up section to that.

Ms. Gigantes: I am happy to deal with them now if the committee would like to do that. They are connected to this section, as noted, but they are not directly related to the amendment we have just discussed.

Mr. Chairman: Let us deal with them now then.

5 p.m.

Ms. Gigantes: They do assume that the numbers will change, but I hope committee members will just make an adjustment.

Mr. Chairman: Ms. Gigantes moves that proposed section 29a of the act, as set out in the government motion amending subsection 31(3d) of the bill, be amended by adding thereto the following subsections:

"(16) Where a patient has not attained the age of 16 years or is not mentally competent, a person authorized under subsection 35(2f) to make decisions about the patient's treatment is entitled to examine and copy the clinical record of the patient's observation, assessment, care and treatment in a psychiatric facility or a copy of that record.

"(17) Subsections 2 to 13, inclusive, apply with necessary modifications to the disclosure of the patient's record to a person mentioned in subsection 14."

Ms. Gigantes: What these amendments essentially provide for is that the proxy, or the person who has substitute consent, can see the records and copy the records, on the same basis as the competent patient.

Mr. Chairman: Do any members of the committee wish to speak to the proposed amendments?

Mr. Polsinelli: Perhaps Ms. Gigantes can give me some direction with respect to this amendment. I cannot find subsection 35(2f).

Ms. Gigantes: That is because subsection 35(2f) was the previous amendment, which I did not get passed.

Mr. Polsinelli: Does your amendment still make sense, then?

Ms. Gigantes: You have to substitute the correct subsection number.

Mr. Chairman: The number is missing.

Mr. Polsinelli: I am still lost. You had that whole package with respect to proxy consent, which did not get carried.

Ms. Gigantes: That is right.

Mr. Polsinelli: This would have been an unnecessary amendment if that package had carried.

Ms. Gigantes: No. It applies whether that package carries or not. It simply refers to how we set up proxy consent. The government has already addressed that matter. However we set it up, it says that under this section, dealing with access to clinical records, the amendment or statement of this agreement shall be available to the person giving substitute consent.

Mr. Polsinelli: Was proxy consent established through this amendment? I do not think we have done that yet. When you had the package before us, I remember that the whole issue of proxy consent was defeated, pending the report from the committee studying the whole issue of substitute consent. If we pass this amendment without anything in place allowing for proxy consent--

Ms. Gigantes: No. We now have proxy consent in place in the Mental Health Act.

Mr. Polsinelli: Where?

Ms. Gigantes: What section is it?

Mr. Polsinelli: Are you dealing with nearest relatives, clause 1(j)?

Ms. Gigantes: No. That simply deals with definitions. What section should we be looking at?

Mr. Sharpe: Clause 29(3)(b) of the act speaks in terms of nearest relatives. Where the patient is incompetent or under age, the nearest relative steps in as the proxy. Section 35, the treatment provision, also has something dealing with substitute decision-making.

We have proxy in so far as we recognize a family member, a relative or guardian, but the principle that has not been accepted is the designation of a proxy through a power of attorney.

Ms. Gigantes: Are you saying that we should be referring to section 35 when we are dealing with this amendment?

Mr. Sharpe: If we are talking about proxy with regard to access to the record, clause 29(3)(b) of the current act says that if a patient has not attained the age of majority, which is now 16, or is not competent, the consent of the nearest relative takes the place of the consent of the patient.

There is some proxy discussion in the confidentiality provision. Also, subsection 35(2) also has a proxy for consent to psychiatric treatment.

Ms. Gigantes: Let me ask this, then. The question Mr. Polsinelli raises is: what kind of access to a clinical record does the government intend by a person other than the patient? There is no provision in this new section on which we are working.

Mr. Sharpe: With respect to access where there is a discretion with the officer in charge, which is the current rule, the provision in 29 would remain the same. In other words, the government amendment suggests that if the patient wants to see his own record, he now has a right to see it under the amendments.

Ms. Gigantes: A competent patient.

Mr. Sharpe: A competent patient. If a proxy, or a substitute decision-maker, such as a relative, wishes to see it, that remains within the discretion of the hospital. The rationale is to avoid family members demanding and obtaining access to records and thereby being able to sift through files in which they may have an interest quite distinct from that of the patient. There may be, for example, some kind of dispute with regard to assets, a matrimonial situation, etc.

If one included the proxy's ability to demand access, in addition to that of the patient himself, one could open up a real problem area where the patient might be quite opposed to having his family member sift through his file. However, neither the patient nor the hospital would be in a position to say no. I think the thrust of Bill 34 is to provide a right of access to those persons about whom information is kept, and not to let someone else step in and gain access. There is a matter of privacy.

Ms. Gigantes: We are not talking about any old person, right? We are talking about a person who is defined under the act, under the list in clause 1(j).

Mr. Sharpe: That is correct.

Ms. Gigantes: So we are talking about one person. We are talking about the person who has consent to treatment established under this act.

Mr. Sharpe: That is correct.

Ms. Gigantes: Now, why the hell should a person who has consented to treatment not have access under this act to the clinical record? That person is presumed to be acting in the best interest of the noncompetent patient. How can that person act in the best interests of the noncompetent patient if that person cannot, as a matter of course, within the definitions we have put down about access to clinical records, have access to the clinical records?

Mr. Sharpe: The concern when this was formulated, and the example given, was that when you are making a decision with respect to someone's treatment on a substitute basis, the decision is limited. It is restricted to the particular form of treatment, the risks and so on.

When one is looking to gain access to an entire record, it is a much greater intrusion in the sense that one is not respecting necessarily the privacy of the individual by opening the whole file. For example, there may be

statements recorded in the file indicating that the particular family member might have been partially to blame for the condition of the patient, or whatever.

5:10 p.m.

There were all kinds of reasons given when we were discussing this as to why access by the substitute decision-maker should remain within the discretion of the hospital. The hospital, as I said earlier, still has an obligation to provide the substitute decision-maker with very complete information. However, it is within their control now as to whether that disclosure is going to be by providing actual access to the entire file. It was felt that when you are dealing with someone other than the patient, it is important that this be made and kept discretionary. In other words, the right to force disclosure should be only that of the patient themselves. That is the policy.

Ms. Gigantes: I am having grave difficulties. We have a noncompetent patient. We have a person designated under the act, in careful thought by the ministry, to be the person who has the patient's best interests in mind, who can give consent to treatment. Here we are not necessarily talking about one dose of drugs or one round of shock therapy. We are talking about treatment, a whole program, perhaps. Yet that person will have a right to look at the clinical file only at the discretion of the officer in charge, not even within the limited access provisions we have made for the competent person.

I do not understand how can we can get so muddle-minded about what we are doing here. How can we say that when a person becomes noncompetent, nobody, except at the discretion of the treating physician or the officer in charge, will have access to the clinical record? I find that absolutely in contradiction to what the government says it is trying to do.

Mr. O'Connor: Just to comment on the argument made about the comment in the file about an adult person who may have contributed to the illness of an under-16-year-old or a noncompetent person, surely we go back to subsection 29a(6). Is the test not set out there? Should the doctor not, if he does not want to reveal the file, take this position on the basis that it would be harmful to the patient's recovery and then let the review board make that decision?

In addition to the criteria set out in subsection 29a(6) by the government's amendments, we seem to be attempting to create other criteria and other tests that have to be met. One is that September 1 is some magical date after which everything can be revealed. Another is that the primary decision-maker for a noncompetent person or a person under 16 should not have access to the record. I have a lot of faith in the test set out in subsection 29a(6) and in the committee designed to review these types of things, and I wonder why the the amendments that have been suggested to delete subsection 29a(16), and the additions, ought not to be considered by the government.

Mr. Chairman: Ms. Gigantes, there is a slight modification in the wording of your amendment to subsection 29a(16). Do you want to read that into the record?

Ms. Gigantes: Yes. I will ask our legal counsel to read out her suggested change there.

Mr. Chairman: I have it here; I will read it for you from the beginning: "(16) Where a patient has not attained the age of 16 years or is not mentally competent," then we strike out everything starting with the word "a" down to the fourth line ending at the word "treatment," so that it now reads, "the patient's nearest relative is entitled to examine and copy" and so on to the bottom of that line. That is the change Ms. Gigantes has agreed to, and her amendment will be as I have just read.

Mr. Warner: I want to make sure I have clear in my mind what the ministry is saying. You are telling us that if I am 15 years of age and competent, my parents do not have access to the file except if the hospital or the doctor agrees; but if I am 16 and competent and if I go through the review board process, after September 1, 1986, I will be able to obtain the information. Is that correct?

Mr. Sharpe: If you are 15, you cannot technically be competent to consent to the release of information.

Mr. Warner: Not technically, but medically I might be.

Mr. Sharpe: You might actually be competent, but not for purposes of having the ability to consent in this form. If you are 15, therefore, you are deemed incompetent for these purposes, and if this amendment carries, then your parent or guardian would have a right to go through the files.

This does raise other issues that we have all heard about: the question of protecting the privacy of a young person and his file. In some areas, such as birth control, it is considered important to maintain confidentiality. This would not permit the hospital or the physician to withhold anything, of course, unless it met the test of substantial or serious harm to the treatment of the patient or to a third person.

Ms. Gigantes: Or emotional harm.

Mr. Warner: In addition to all the qualifiers that have been put in here, as many as there may be, now we have also divided folks into two distinct categories. Is that right?

Mr. Sharpe: In terms of age? Is that your point?

Mr. Warner: Yes.

Mr. Sharpe: That is correct.

Mr. Warner: So we now make it even more complicated. Some folks will be treated fairly and others will not.

Mr. Sharpe: There has been a division up until now. The division has been one of age of majority. A government motion has carried that reduces it to 16 for the sake of uniformity and consistency.

Mr. Haggerty: I have just one question for clarification. If we were to adopt the motion put forward now to amend the act, what effect would it have on the Young Offenders Act?

Mr. Sharpe: Regarding the Young Offenders Act, Ottawa accepted an amendment with respect to confidentiality that was proposed by Ontario. It permits the withholding of information in a report provided to court on a

young person where disclosure could result in the same kinds of tests as are set out in the government amendment. The question of access and the rules for protecting confidentiality, regulating the collection of information and so on are consistent in the sense of the government amendments, but with the amendment that is now on the table, they would change the way it is handled.

The question of which would take precedence would be a matter for the court to decide. It used to be that one assumed the federal legislation took precedence, but there have been some recent decisions suggesting that the more specific legislation--in this case, the provincial act regulating records--may be given priority. There would certainly be a conflict between the two statutes. Then it would remain for a court to decide which would override which.

Mr. Chairman: Are there further comments? Are you ready for the motion on these two subsections? Shall the amendment proposed by Ms. Gigantes carry? Opposed?

The vote is five to four. Would Mr. Ward like the vote taken again?

Mr. Turner: Do you want a recorded vote?

Mr. Chairman: I would be pleased to call the vote again. Are you satisfied with the vote?

Mr. Ward: May we have a recorded vote?

Mr. Chairman: We can have a recorded vote if you wish.

Mr. Warner: He is not a member of the committee.

Mr. Turner: No, I did not request it. It was Mr. Ward.

Mr. Chairman: Mr. Ward is requesting a recorded vote.

Mr. Warner: It is not his privilege to request a recorded vote.

Mr. Callahan: I will request it.

Mr. Chairman: Mr. Callahan has requested a recorded vote.

The committee divided on Ms. Gigantes's amendment, which was agreed to on the following vote:

Ayes

Gigantes, O'Connor, Partington, Turner, Warner.

Nays

Callahan, Haggerty, Hart, Polsinelli.

Ayes 5; nays 4.

Mr. Chairman: We have still another strange alliance. I will leave that to those of you who wish to--

Mr. Polsinelli: Opposites have been known to attract.

5:20 p.m.

Mr. Chairman: Opposites attract.

Where do we go from here? Give us a moment. There are some to which we cannot return, because we require other people to be here during the course of those discussions.

Clerk of the Committee: No. We have to carry this before we can deal with those two.

Mr. Chairman: We cannot carry that, because we have to have the Attorney General here on part of it. Thus, we cannot deal with all of subsection 31(3d) until we have the Attorney General to complete it for us. What can we move to?

Clerk of the Committee: Ms. Gigantes's number 14.

Mr. Chairman: We can go to amendment number 14, proposed by Ms. Gigantes under section 31. I will give you a moment to find it. Are you comfortable moving to that section, Ms. Gigantes?

Interjection: That is number 14?

Ms. Gigantes: Yes.

Mr. Chairman: It is numbered at the top of the right-hand corner for indexing purposes only.

Ms. Gigantes: I do not know what you are talking about.

Mr. Warner: I think he means this one.

Interjection: Subsection 29(2)?

Mr. Chairman: Subsection 29(3). It is Ms. Gigantes's motion under section 31 of the bill.

Ms. Gigantes: No. You are dealing with the old package of my amendments.

Mr. Polsinelli: We have a new package.

Ms. Gigantes: We have a new package with my amendments. The next one I have to deal with would be section 30a, which replaces the old motion number 20 standing in my name.

Mr. Chairman: What is that number for our index?

Ms. Gigantes: It is numbered 20, government 19, at the top right-hand corner.

Mr. Chairman: I have no objection to moving to that one, if you like.

Ms. Gigantes: It is section 30a of the said act. It is government number 19. I believe we have government amendments to deal with before that.

Mr. Chairman: We do. If you will give us a moment, we will work it out to make sure we have the right section.

I believe we can deal with the index number 16.

Ms. Gigantes: It is number 15a.

Mr. Chairman: No. There was a reason we could not deal with 15a. I just asked about that one. Why can we not deal with 15a now?

Clerk of the Committee: It was carried.

Mr. Chairman: That is why we cannot deal with it. I knew there was a good reason; I just could not think of what it was.

I am talking about the index number 16 in the top right-hand corner. If you have them in order, they should be relatively easy to find. This is the government's amendment. Mr. Ward, would you like to take it upon yourself to clarify the government's position with respect to this one?

Mr. Ward: I believe it is consistent with the amendments that were previously introduced.

Mr. Callahan: Motion 15a was carried on June 3, by the way.

Mr. Warner: We are dealing with 16.

Mr. Chairman: Ms. Hart, are you moving this?

Ms. Hart: You go ahead.

Mr. Chairman: Am I correct in assuming this is simply a technical amendment in keeping with what we have done throughout this bill, that it is really a housekeeping amendment?

Mr. Ward: As usual, Mr. Chairman, you are absolutely correct.

Mr. Chairman: Mr. Callahan has offered to move this, but I would prefer that Ms. Hart do it.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsections:

"(3a) Clause 29(9)(a) of the said act is amended by striking out 'majority' in the first line and inserting in lieu thereof '16 years.'

"(3b) Clause 29(9)(b) of the said act is amended by striking out 'majority' in the second line and inserting in lieu thereof '16 years.'

"(3c) Clause 29(9)(c) of the said act is amended by striking out 'majority' in the fifth line and inserting in lieu thereof '16 years.'"

Mr. Chairman: Carried?

Ms. Gigantes: No.

Mr. Chairman: Sorry. I thought there would be no discussion on this one.

Ms. Gigantes: As I understand this section, these amendments deal with changing the old act, so that instead of dealing with a person who is 18

years of age, we are making certain provisions for a person who is 16 years of age. That includes disclosure of records, use of material and clinical records for research studies and so on, disclosure for subpoena purposes and court proceedings and all the matter that is covered in section 29.

My concern here is that we had some discussion early on about what provisions were going to be made for persons 12 to 16 years old who were in schedule 1 facilities. It was also my understanding that we were going to consider attempting to treat them with some consistency in our law and that we would have some suggestions from the ministry on the subject.

I would like to raise it now. If we do not have proposals right now, I would like to give notice that, before we sum up our discussions, we do deal with that matter. Perhaps the ministry has a response now.

Mr. Ward: The amendments before you deal with the disclosure provisions previously passed. On the issue of those between the ages of 12 and 16, which I believe we talked about at the outset a couple of weeks ago--

Ms. Gigantes: Yes.

Mr. Ward: --we have drafted some proposals through the Ministry of Health. We have submitted them to the Ministry of the Attorney General to look at them in terms of their consistency with other legislation. It is anticipated that we will bring something back to the committee in that regard, but it should not impact directly on these amendments, which relate only to subsection 29(9).

Ms. Gigantes: I just raised it at the next reasonable opportunity.

Mr. Ward: We do have some proposals over at the Ministry of the Attorney General right now, and perhaps tomorrow or a little later on I will come back to the committee with them.

Ms. Gigantes: So we will have amendments.

Mr. Ward: You will have some proposals to look at; I cannot guarantee that you will have amendments. We sent our proposals to the Ministry of the Attorney General and we will report back to the committee.

Ms. Gigantes: Okay. Thank you.

Mr. Chairman: Are you ready to deal with this, then? Is this carried?

Motion agreed to.

5:30 p.m.

Mr. Chairman: We can now move on to motion 17. I would ask the committee members to make certain that, in dealing with this, they have the new page 17, which was given out on May 27, 1986. Destroy the old one, if you will.

Mr. Ward, would you like to speak to the amendment on the part of the government?

Mr. Ward: It is consistent with or ancillary to other amended sections of the act, changing the setup modestly, at least in terms of the review boards. It is self-explanatory.

Mr. Chairman: Could I have a government member to move the amendment, and then I will ask Ms. Gigantes to speak to it?

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsections:

"(3e) Subsections 30(1), (2), (3) and (4) of the said act are repealed and the following substituted therefor:

"30(1) The Lieutenant Governor in Council shall appoint such number of psychiatrists, barristers and solicitors and persons who are not psychiatrists or barristers and solicitors as it considers appropriate as members of the review board and shall designate a person to be the co-ordinator of the review board.

"(2) The review board shall sit in panels of three or five members, at least one and not more than two of whom are psychiatrists, at least one and not more than two of whom are barristers and solicitors and at least one of whom is not a psychiatrist or a barrister and solicitor.

"(3) The Lieutenant Governor in Council shall designate from among the members chairmen and alternative chairmen for the panels.

"(4) The co-ordinator of the review board shall assign the members to sit on the various panels of the review board and shall designate the psychiatric facilities in respect of which each panel has jurisdiction."

Before we move to Ms. Gigantes, the chair would like to take note of the fact that Mr. Callahan is physically here.

Ms. Gigantes: On this amendment, how many board members and panels does the government contemplate?

Mr. Ward: My understanding is that there is one review board that will sit in panels.

Ms. Gigantes: With how many members on the review board?

Mr. Ward: There is a pool of up to 100. The pool of review board members will sit in panels rather than have what began as five regional boards and has expanded to 12.

Ms. Gigantes: Has it been determined how many of each category, i.e., how many psychiatrists, how many barristers and solicitors and how many people who are neither?

Mr. Ward: If you look at subsection 2, you will see the breakdown of each panel. The 100 members or whatever the pool would be proportionate on that basis so there would be the right mix available for the panels.

Ms. Gigantes: That does not help me. We know that on the panel at least one must be a psychiatrist, not more than two, at least one must be a barrister, not more than two and at least one must be neither. Does that mean we will have on that review board of 100 people 40 barristers and solicitors, 40 psychiatrists and 20 other people?

Mr. Ward: I have not looked at the percentages, but in looking at the structure of the panel and taking that as a percentage, it would be from

20 to 30 per cent psychiatrists and from 20 to 30 per cent barristers and solicitors. There is a range. Do you want us to tie down the number and predetermine exactly how many of each?

Mr. Ewart: In some areas you might have five lawyers, all of whom could be available at any time. Another area might need a panel of 15 lawyers because their availability is not that great. It may vary from one part of the province to another.

Ms. Gigantes: We are doing away with the regional board situation, but we are going to run it as if it is a regional board.

Mr. Ward: There will be a pool of board members available to sit on the panels. As has been indicated, not only with lawyers but also with psychiatrists, you do run into availability problems. Having five psychiatrists from one area may not be appropriate, if they are not going to be available for a hearing, so that is left as discretionary.

Ms. Gigantes: I am curious about what we are achieving here. We are doing away with the regional board structure but we are, in effect, setting up a regional board which is one big unit that will operate on a regional basis.

Mr. Ward: How will it operate on a regional basis? If there is a pool available of resources and personnel to sit on panels, that is not unlike many other boards.

Ms. Gigantes: A psychiatrist from Ottawa is not going to be dealing with a review board matter on a question arising in Toronto.

Mrs. Mauro: There were five regional psychiatric review boards: one in the northwest, one in the northeast, one in the east, one in the centre and one in the southwest. We were finding the boards could not respond to hearings in a timely fashion. What we have now is 12 regional boards, one in each urban centre where there is a major psychiatric facility. We have regional review boards for Toronto east, Toronto west, Brockville, Kingston and Ottawa, where there are major psychiatric hospitals, and there are 12 panels in all set up. That makes the hearings more timely and there is a local resource right within the urban centre.

Ms. Gigantes: What does it benefit us to call it one board as opposed to 12 regional boards?

Mrs. Mauro: It is a province-wide panel, and the 12 chairmen have a pool of about 100 people to draw upon. In some cases, you might have an Ottawa physician who would have a conflict because he had seen that patient in the past, and the chairman for Ottawa could draw upon psychiatrists in Toronto or Hamilton.

Ms. Gigantes: That is precisely what I am trying to get at. Will there be some crossover appointments?

Mrs. Mauro: Only where necessary.

Mr. Chairman: Standing orders require that we recess to vote when the bells are ringing.

The committee recessed at 5:39 p.m.

6:28 p.m.

Mr. Chairman: We can resume at the point when we were interrupted by the vote in the House. Mr. O'Connor is the next speaker on this amendment.

Mr. O'Connor: I will forgo my position. It being 6:30, I move adjournment of the committee.

Mr. Chairman: If we could, I would like to deal with this before we adjourn. Do you mind doing that?

Mr. O'Connor: No.

Mr. Chairman: Shall the amended motion on subsection 31(3e) with attendant subsections carry?

Motion agreed to.

Ms. Gigantes: Mr. O'Connor wanted to speak on it.

Mr. Chairman: He stood down his opportunity.

The committee adjourned at 6:30 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
TUESDAY, JUNE 10, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Ferraro, R. E. (Wellington South L) for Mr. D. R. Cooke

Clerk: Mellor, L.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

Ewart, J. D., Director, Policy Development Division

Shipley, A. Q., Counsel, Policy Development Division

From the Ministry of Health:

Sharpe, G., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 10, 1986

The committee met at 4 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

Mr. Chairman: Members of the committee, I see a quorum, so we can get under way.

We were dealing with motion 13 on your index sheet. Those are the circled numbers in the top right-hand corners. We had agreed to defer further discussion on Ms. Gigantes's proposal to delete subsection 29a(16). We had further agreed that the delay in discussion would take place until the Attorney General (Mr. Scott) was able to be here with us.

There would be some value, Ms. Gigantes, in your reviewing briefly, if you would, some of the arguments you have already put before us. I will give you the floor to so do.

Ms. Gigantes: You are so kind, but I cannot figure out where you are.

Mr. Chairman: You are dealing with subsection 29a(16). Did your amendment call for deletion of that?

Ms. Gigantes: Yes, it did.

Mr. Chairman: That is what this debate is all about.

Ms. Gigantes: Is that what you want me to talk about?

Mr. Chairman: I think you should put your arguments before the Attorney General, and let him respond, if you would.

Ms. Gigantes: I would have hoped that the Attorney General had read Instant Hansard, but of course we do not have it, do we?

Mr. Chairman: We do not have Hansard for yesterday.

Ms. Gigantes: The Attorney General will certainly understand the object of the amendment.

It ensures that the access to personal records available to everybody else in the province within the limitations of access provided for in Bill 34--which are generally wider than the access provisions provided under this legislation for psychiatric patients to see their own personal clinical records--affects those records which have been in existence, as well as patients' current treatment, current appeals, current whatever in our psychiatric facilities.

In that way, psychiatric patients will be given the kind of access to their clinical records that they would have had had they been treated as originally proposed under Bill 34.

We further discussed the fact that the tests a psychiatric patient had to pass to get access to a clinical file were much stronger than I personally would have liked to see. Those tests are in existence, according to the work we have done now, and I see no reason why we should be limiting the access to records created after September 1, 1986.

Hon. Mr. Scott: Frankly, I am opposed to the amendment on a number of grounds.

First, let me tell you what I am not concerned about. I am not, at the moment, concerned about any proprietary interest, if any, of the doctor. For these purposes, I do not regard him as having a proprietary interest in the document per se.

I am not concerned to protect the doctor by shielding this information. That is not my motive. If that were the only consideration, I would support the amendment. What I am concerned about is a much more fundamental question, which can be divided into two parts.

First, this legislation is retroactive in the precise sense that it will apply to documents that came into existence at an earlier time, when there was a rule of confidentiality with respect to them. I am not opposed to retroactive legislation in every case. Much freedom of information legislation, for example, is retroactive. I have no troubles with it.

The trouble I have here--and we will deal with it in the Freedom of Information and Protection of Privacy Act when we come to third party information--is that the doctor's record will often be composed of information given to him by third parties on the basis that it was going to be confidential and private.

Once this act is passed, everybody will be deemed to know--because ignorance of the law is no excuse--that they cannot give information on the basis of confidentiality. It may be disclosed to the patient. However, when the records prior to September 1, 1986, were prepared, family members and third parties believed they could tell a doctor something that would not be disclosed to the patient. It is really that I am particularly concerned about.

If a member of a family is a patient, for example, his mother and father and other family members may be interviewed by the doctor in an effort to get a history or a complete understanding of the condition of the patient. They gave that information, I am quite confident, in many cases, on the basis that: "You will not tell anybody I said this, will you? But this is what I think or this is what I feel or this is what I saw in respect of the patient's conduct." That information will all now become public and I frankly think that is a grave disservice to the people who provided that information in circumstances when they believed it to be confidential.

In the future they will have nothing to complain about but if, for example, I had been interviewed and gave information on the understanding that it would be private to the doctor, I think it is a major matter to require its disclosure, at least without my consent. Therefore, I would oppose the section as unfair.

Mr. O'Connor: It seems to me that there are three interests that require consideration or protection, if you will, in this discussion.

The first, obviously, is the patient. His or her interests are absolutely at stake.

Second are the family members, as the Attorney General has indicated. Family members and friends may have given information to the psychiatrist, in the interest of assisting the patient, which may not now be of assistance to the patient should he see it. It may cause trouble between family members and the patient, or friends and the patient.

The third interest, of course, is that of the doctors involved. I am happy to hear the Attorney General acknowledge that he is not concerned with the embarrassment that might come to a doctor who has flippantly said something in a record or something which he now would not want the patient to see. I expressed that view myself yesterday and I guess we are ad idem on that point.

With regard to the other two people to be concerned with, and protected if necessary, it seems to me that by making the argument he has, he is arguing that the protections of subsection 29a(6) are somehow insufficient. If we agree that subsection 6 is the test that should be applied, then we surely should rely on that test and on the protection set out in that subsection. So if the doctor wishes to not reveal the record to a patient and refuses to do so and an application is brought before the committee, then the test to be applied is whether "serious harm to the treatment or recovery of the patient" would result. In that regard the comments made by the family members or friends of the patient would be taken into account. Or the second section, the second test, "serious physical harm or serious emotional harm to another person" would be taken into account particularly with regard to the concerns of family members and friends.

I would suggest that we are contradicting ourselves if, on the one hand, we say that is a sufficient test but, on the other hand, we do not want to reveal anything before a particular date, thereby declaring that the test does not apply before that date and is somehow insufficient. To say that information was given privately, on the assumption that it would be held privately and now it is to be made public, is absolutely incorrect. There is no suggestion that this record or information is going to be made public. It is going to be made available to the patient only. There is going to be nothing public about it and I would suggest that is an incorrect assumption on the part of the Attorney General. For those reasons, I would suggest that this amendment of Ms. Gigantes's should be supported.

4:10 p.m.

Hon. Mr. Scott: As my assumptions have been attacked by Mr. O'Connor, perhaps I could make this observation. Let us assume that my father has a serious mental illness. In those circumstances it would be routine for a psychiatrist treating him to interview his children and his wife. They would be interviewed for the purpose of getting accounts of events that have occurred in the home, and getting ad hoc assessments of no particular medical value, except to the doctor in trying to piece together the origins of the disability or the requirements of treatment.

Much will be said in those conversations that is anecdotal and absolutely personal to a family relationship. That information is given by the

wife and children, by and large, with the best will in the world in an effort to help the doctor come to grips with the medical problem. It is also given on the understanding that it will be held confidential.

That rule is as old as, if not older than, the reporter's rule that sources are confidential. All that material will now be disclosed at my father's request.

Mr. O'Connor: No, it will not.

Hon. Mr. Scott: Except material that may only be protected by subsection 6. Subsection 6 says that if I, the son, object to my father seeing the comments I have made on the file, I may appear with him before the review board and assert that if my father sees what I have said about him, I will suffer severe emotional harm. Now that is almost as bad as disclosing the information.

Mr. O'Connor says two things. If the family members have given the doctor this information, it must either be released over their objection, or they will be allowed to have a review board hearing in which they can assert emotional harm will result if it is released. It seems to me that either of those things are absolutely destructive of the way the information was given, the purpose for which it was given. More important, they run the real risk of doing serious damage to what may be left of that family unit. It makes no sense at all.

I recognize we are making a new rule, but let us make it for the future so that brothers and sisters, mothers and fathers and husbands and wives who talk to psychiatrists about a patient will know they do so at the risk of it being disclosed.

To expose members of families to that possibility after all these years is absolutely unfair. To go further and say, if you want to resist it you have to satisfy a tribunal that you will suffer serious emotional harm, when the harm will be the destruction of your family relationship, is to be excessively legalistic. It makes no sense. The hardship, unpleasantness and unhappiness it will cause to innocent family members who gave information to help their sick brother, father or relative is extreme and I would not recommend it.

Ms. Gigantes: The description we just heard from the minister of the process we are involved in creating appals me. May I call the attention of the committee to motion 13, the second page? Would members read after subsection 6, subsections 7 and 8? Mr. O'Connor, could I ask you to take a look at sections 7 and 8?

There is no suggestion that a third party be involved in a review board hearing.

Hon. Mr. Scott: Could I ask a question?

Ms. Gigantes: Subsection 7 says: "The patient and the attending physician may make submissions to the review board before it makes its decision."

Subsection 8 says: "The review board shall hear any submissions from the attending physician in the absence of the patient."

Now, the physician would presumably make the decision in the event

somebody was going to get injured. The physician shall make submissions to the review board in the absence of the patient.

Subsection 9: "The review board may hear any submissions from the patient in the absence of the attending physician."

Hon. Mr. Scott: I operated on a misunderstanding--

Ms. Gigantes: Exactly.

Hon. Mr. Scott: To be perfectly fair, I operated on the understanding that the giver of the information--the father, mother, brother or sister--could make a submission to the review board that the giver would suffer emotional harm if the information was released. Ms. Gigantes has pointed out that the third party whose information is being handed over will not even have the right to be heard before that review board. Only the doctor will be heard in the patient's interest. The doctor may not give a tinker's damn about the patient. This is the point of what you have shown us. Mr. O'Connor's point that the giver of the information, the relative--the father, the mother or whoever--will have a chance to have that information locked up under subsection 6 is not true because that person is not even heard under the subsection 6 hearing. It is worse than I thought it was, not better.

Ms. Gigantes: The physician is treating the patient and knows what is in the file. If the physician, to whom we give God-almighty powers under this act, makes the judgement that there is likely to be or that it will result in serious harm to the patient or serious physical or emotional harm to another person, the physician--who has noted down these comments from other people and considers them important enough to note down--has the responsibility to appear by himself, absent from the patient, before the review board, if the patient so requests, to say why the file shall not be disclosed.

He has already made the judgement that the file shall not be disclosed. That is why he is coming before the review board. That is why the patient has appealed. He has already decided the file is not going to be disclosed. The patient says, "I want a hearing on this," and the physician has the right to go in private to the review board, without any cross-examination by the person whose personal record is in question here, and say why he has already made the decision that it shall not be disclosed. I do not know just how far we are going to stretch this matter. It seems more and more tenuous to me that we should be dealing with a September 1, 1986, date. I find it unacceptable.

Mr. O'Connor: On a point of order: I feel we should deal with that bell. I believe the standing orders provide that when there is a bell ringing for a vote, the committees must suspend business pending the vote. We should either unanimously consent to keep sitting or do something about the bell.

Mr. Chairman: We had tacit consent, perhaps before you arrived. Since you have raised the point, representatives from all three parties, including the Conservative Party, have agreed that the whips would be informed of our decision to continue, since we had a lengthy interruption yesterday that was relatively nonproductive. The whips have been advised of where we are and to give us approximately five minutes to get back into the House. There was concurrence on that and that is the way I am leaving it for now. I did not want to raise it in an official way because we had an unofficial agreement among all of us.

Mr. O'Connor: I am content with that agreement, but since the rules are definite that we cannot sit when the bells are ringing, we should unanimously overrule the rules.

Mr. Chairman: No. Apparently the rules indicate that in my judgement--in the judgement of the chair--I have to allow you to leave in adequate time to meet the vote. That is my interpretation and understanding of the rules. Let me assure you we have advised all the whips that we are here. I think we are operating quite within the rules of the House.

Mr. O'Connor: After this motion is passed, we would not want the government to declare it a nullity because it was passed during the time the bells were ringing.

Mr. Chairman: Of course, you are making an assumption, are you not?

Ms. Gigantes: The bells are not ringing.

Mr. Polsinelli: To the same point of order: I suggest that if we have unanimous consent, we proceed, and as soon as we are legally entitled to sit again we ratify everything we have done in this period.

Mr. Chairman: We can do that as well if there is any question about it.

4:20 p.m.

Mr. Callahan: I was just going to draw to Ms. Gigantes's attention that if she is going to read those subsections, she has to read subsection 10 as well, which brings it right back subsection 6.

Ms. Gigantes: That is Mr. O'Connor's point. The physician has refused. First, we do not get to a review board until the physician has refused access to the record. Second, when he has refused, he has refused on grounds of clause 29a(6)(a) or (b). When he goes before the review board in private to tell the board of his decision and why he took it, presumably he will be able to give the reason.

Mr. Callahan: I assumed the reason you were saying subsections 7, 8 and 9 covered it was because it gives the doctor an opportunity, in the absence of the patient, to explain the special circumstances of why the clinical records should not be released. I would be inclined to agree with the Attorney General that the doctor is not going to be terribly concerned about anything, other than perhaps the statements that he may have made and that may put him in a difficult position.

Ms. Gigantes: If he wants to look for other reasons to protect his position, he will look for them under clause (a) or (b), and I have a feeling he will do it well.

Mr. Callahan: I do not think the purpose of subsection 16 is to protect the patient as much as it is to protect the relationship that may be shattered as a result of statements having been made that are now revealed to the patient. You can carry that to a very large degree. Let us say that the father, or whoever the person is, makes some rather unusual or remarkable statements about his child. To make those available to the child, I would think, would be absolutely catastrophic.

Ms. Gigantes: It might be quite curative. Part of the problem may be the father.

Mr. Callahan: It may be curative, but I would suggest that if there is even a one per cent chance that it would be damaging to the individual--

Ms. Gigantes: The doctor makes the decision.

Mr. Callahan: --you would be accomplishing very little in terms of the Mental Health Act.

Ms. Gigantes: It is not you or me who makes the decision; it is the doctor, the treating doctor.

Mr. Callahan: I have some very serious concerns that the doctor would concern himself about the question of those statements.

Hon. Mr. Scott: May I ask a rhetorical question? How is the doctor, when he is reading a file this thick, that may be five years old, going to know if emotional harm is going to come to the person who conveyed the information? He is not even going to think of that. He is going to have five minutes to go through this file. He is not going to even think of the interests of the people who gave the information.

Mr. O'Connor: The Attorney General can indulge us in all kinds of fanciful discussions and examples, which perhaps are true and perhaps are not true. Ms. Gigantes's point is that the disclosure to members of the family and the patient could be equally helpful to the situation as it could possibly be harmful. It is not the physician's discussion--

Mr. Chairman: Mr. O'Connor, with respect, I allowed you on the floor because I thought you had another point of order. You are out of order. Mr. Warner is the next speaker and you follow Mr. Warner.

Mr. Warner: Your are doing an excellent job, Mr. Chairman.

I am really quite surprised at the deviation from the normal course of logic that the Attorney General applies. The reason we are at the review board is that the physician, in his or her opinion, does not think it is appropriate to release the information. I must assume that the physician has a reason for this and that at the review board, in the absence of the patient, the physician will reveal the reason he decided not to release the files. I must further presume that, in order to substantiate his opinion at the review board, the physician will have read the file. To do less would seem to be somewhat irresponsible and I doubt the physician would be so irresponsible as to not read the file before he appeared before the review board.

Having satisfied all of those requirements, why does it now not make sense to allow the files to be released, regardless of the date? I cannot see that imposing some arbitrary date is useful in either the spirit of freedom of information or in the spirit of what the charter is all about. We do ourselves and the public a great disservice if we impose an arbitrary date and say: "Yes, you have a right to see your information only after September 1 of this year. You do not have access to anything that transpires between now and September 1." I honestly cannot appreciate whatever unusual logical system the Attorney General is applying at this moment. It is contrary to his normal way of proceeding.

Hon. Mr. Scott: That is just to make me feel better, is it?

Mr. Warner: I hope it does.

If I could appeal on one more basis, the amendment will likely pass. I urge the government to support it and make it a unanimous vote in the spirit of this legislation, which I happen to believe is very important. A little sober second thought here would be of service to all of us.

Mr. Chairman: Mr. O'Connor.

Mr. O'Connor: I pass, Mr. Chairman. Thank you.

Mr. Chairman: You mean you have said it all before?

Mr. O'Connor: I have said it all.

Mr. Chairman: I wanted to hear it again. I thought it was so good.

Mr. Callahan: Surely when the question of freedom of information legislation was addressed by way of ministerial statement in the House, there was a caveat that there would not be revelations that would injure innocent parties. That is what you are suggesting here. If only one person is injured as a result of the revelation of that information, you have not accomplished the salutary effect you are trying to accomplish. You have injured that person.

Mr. Warner: It is already in section 6a and section 6b, which we have passed.

Mr. Callahan: That is the test.

Mr. Warner: That is the test you want and the one which will be applied. It is there. We have set up further barriers. We are also saying the attending physician can reveal whatever information he wants, hearsay or otherwise, in front of the review board in the absence of the patient. I do not know how many more safeguards you want built in.

Mr. Chairman: Any final comment? We are getting quickly to the point where we will have to deal with this by way of a motion which we have on the floor.

Mr. Warner: Call the question, Mr. Chairman.

Mr. Chairman: I am ready to call the question. Are there any further speakers on it? I do not want to pass anyone by. We have had considerable discussion, and I appreciate that, but it is a very key and sensitive point. I just want to make sure everybody understands the position. Then we will go to a vote.

Mr. Polsinelli: For the reasons enunciated by the Attorney General and myself yesterday, we are not prepared to support this amendment and request a recorded vote.

Mr. Chairman: We have a request from Mr. Polsinelli that it be a recorded vote. I will call for the vote on Ms. Gigantes's amendment to delete this section.

The committee divided on Ms. Gigantes's amendment, which was agreed to on the following vote:

Ayes

Ms. Gigantes, Mr. O'Connor, Mr. Partington, Mr. Villeneuve, Mr. Warner.

Nays

Mr. Callahan, Mr. Ferraro, Ms. Hart, Mr. Polsinelli.

Ayes 5; nays 4.

Mr. Chairman: We have to break at this point because we have been called.

Hon. Mr. Scott: When it comes to proclamation dates, I will ask the committee to deal with this section separately. In default, we may not be prepared to call the bill.

The committee recessed at 4:29 p.m.

5:22 p.m.

Mr. Chairman: Members of the committee, the Attorney General is not here. Is there any objection to starting without his being present? My understanding is that the amendments coming up are relatively straightforward and may not necessarily require his presence.

Mr. Warner: I do not object to what you are suggesting. When the Attorney General comes, however, perhaps he could clarify the threat he laid before the committee when we rose. Perhaps he could clarify his position on the status of the bill and on whether he intends to withdraw it. Aside from that, I would be pleased to go on with some other amendments.

Mr. Polsinelli: I would like to point out that what the Attorney General said was not a threat but merely an explanation of parliamentary procedure and the prerogative the government has when a committee reports a bill. I take objection to it being called a threat. It definitely was not that.

Mr. Chairman: Could we consider it a suggestion that may ultimately result in the withdrawal of the bill? When the Attorney General comes, we can ask him what his intentions are. If I am reading the concerns of Mr. Warner, there is really little point in spending a lot of time working on amendments if the entire bill is going to be withdrawn.

Mr. Ferraro: I totally agree with Mr. Warner.

Mr. Warner: Precisely.

Mr. Chairman: That is a valid concern and the chair will recognize that concern when the Attorney General arrives.

Can we now get on with the amendments? They are government amendments. We will go to Ms. Hart.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(1a) Subsection 29(1) of the said act is amended by inserting after "section" in the first line "and in section 29a."

Is there any comment on that amendment? There being no comment, shall the amendment carry? Carried.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(1b) Subsection 29(2) of the said act is amended by inserting after "subsections 3 and 5" in the first line "and section 29a."

Mr. Chairman: Shall the amendment carry? Carried.

Mr. Chairman: Now we move to Ms. Gigantes. This is one of three numbered motion 14.

Mr. Chairman: This is dealing with subsection 29(2) and is motion 14 on your index page. Do we all know where we are?

Mr. Warner: The one that says subsection 1g, clause 29(3)(e) is amended?

Mr. Chairman: Subsection 1f. Also at the bottom it says "replaces motion 14."

Mr. Warner: I see.

Mr. Chairman: We will take a moment to make sure we all have the same amendment. Ms. Gigantes, do you have yours?

Ms. Gigantes: I do. Thank you, Mr. Chairman.

Mr. Chairman: I believe we are in order in proceeding with this one. Correct me if I am wrong, but I think this is the one that follows--

Ms. Gigantes: This amendment relates to a further amendment I will be raising when we get to what had been my proposal for section 47. It is the new amendment you received yesterday, noted as replacing motion 45. Does the committee have that package received yesterday, which is a reworking of the amendments standing in my name?

Mr. Chairman: That has been circulated. Everyone should have it.

Ms. Gigantes: Would it not make sense to deal with that motion before we deal with the one numbered 14? It has to do with substitute consent. It originally dealt with the substance of my motion that replaces motion 45 and deals with substitute consent.

Mr. Chairman: Would you feel comfortable in arguing your position with all of the amendments in total, the three of them?

Ms. Gigantes: Yes.

Mr. Polsinelli: Is this the new package?

Ms. Gigantes: Yes, that is the new package.

Mr. Polsinelli: So what we are arguing now has to do with this new package?

Ms. Gigantes: That is correct. It is the motion near the back of that package which says at the bottom "replaces motion 45." It deals with the question of substitute consent. We have in a peripheral way dealt with a previous motion I put, numbered motion 45, and we defeated the peripheral motion associated with it. However, I now have a motion that would offer a different treatment of substitute consent. I had hoped that when we dealt with the substance of that motion, Mr. Ward would be here.

Therefore, I would like to wait on the motion you are now raising so that we can argue the substance with which it would be associated--namely, the motion that replaces motion 45--in Mr. Ward's presence.

Mr. Chairman: For the information of the committee, it is fair to say, although Ms. Gigantes may disagree with this, that in essence this replaces, modifies or changes somewhat the proposal that was defeated a couple of weeks ago, which is a relatively major policy question. That being the case, I would feel more comfortable, and I think members of the committee would feel more comfortable, if a government representative were here. I am not trying to cause confusion or complicate the order of our business in any way, but if we could set these aside and move on to something less controversial, there might be some value in doing so.

Ms. Gigantes: In particular, I would like somebody representing the Minister of Health (Mr. Elston) to be here.

Mr. Chairman: I am glad you concur with what I say.

Ms. Gigantes: It is the Ministry of Health's committee. Is that what you are saying? Is it a committee of the Ministry of the Attorney General?

Mr. Ewart: It is joint with the Ministry of Health.

Ms. Gigantes: I would ask Mr. Ward to take a look at it.

Mr. Chairman: Do you know whether he is available? Do you want to recess for a couple of minutes while we see whether we can get Mr. Ward?

Ms. Gigantes: No. Why do we not proceed with other motions and then come back to this one?

Mr. Chairman: If we can do so without causing a great deal of confusion, I do not have any disagreement with doing that.

Motion 18 is a government amendment. Does anyone disagree with going to motion 18 and then coming back to the Gigantes group? That will be Ms. Hart again.

Ms. Hart: As soon as I find it.

Mr. Chairman: Ms. Hart moves that section 30 of the bill be amended by adding thereto the following subsection:

"(3f) Subsection 30(5) of the said is amended by striking out 'a review' in the third line and inserting in lieu thereof 'the review.'"

Ms. Hart: It appears that a word is missing. It should say, "of the said act."

Mr. Chairman: All right. I am also asked to make an alteration to the number of the subsection at the top of the motion. That should read "31" rather than "30." It is probably a typo.

Would you make the same change in the operative paragraph, where the motion is moved, so that it reads, "I move that section 31 of the bill."

We also have to insert the word "act" after the word "said," so that it reads, "Subsection 31(5) of the said act." Add that word on your pages. That will be part of the amendment, with Ms. Hart's agreement.

Ms. Hart: So agreed.

Mr. Chairman: I have agreement from Ms. Hart to insert that.

Do you want a moment to look at it or are you ready to vote on it? We are ready to vote on it. Is there agreement on the amendment?

Motion agreed to.

Mr. Chairman: We cannot proceed with motion 19 because of complications.

Ms. Gigantes: What is there about motion 19 that is so complicated?

Mr. Chairman: Mr. Sharpe, do you want to speak to that?

5:40 p.m.

Mr. Sharpe: Yes. The members of the committee asked us to come up with something to do with children who are admitted to psychiatric hospitals at the say-so of parents or guardians. An amendment addressing that has been distributed. It is subsection 31(lc), and is on the third page of the material that was circulated at the beginning of the meeting today.

Subsection 31(lc) is an amendment that should replace motion 19. Motion 19 addresses the matter of notice. If the amendment on children carries, this would add to the notice provisions a (1b), where the officer in charge must give notice of the child's right to apply to the review board to bring in legal aid. It will be dependent on discussions relating to the children's model.

Mr. Chairman: You will bring the Attorney General (Mr. Scott) up to date on that?

Mr. Sharpe: Yes.

Mr. Chairman: We can now go back to motion 14, with the Attorney General present.

Interjection.

Mr. Chairman: We will go to that after we deal with--we can go back to your package, Ms. Gigantes.

Clerk of the Committee: She wants Mr. Ward.

Mr. Chairman: Oh, you want Mr. Ward here for that.

Hon. Mr. Scott: No. I thought he was going to be here, which is why I--

Mr. Chairman: I was addressing my question to Ms. Gigantes. She had requested that Mr. Ward be here. Are you comfortable with the Attorney General being here?

Ms. Gigantes: If we are dealing with motion 19 and the motion that has been placed before us today dealing with children, I see no reason why we--

Mr. Chairman: We can deal with motion 19 or we can revert back to motion 14.

Ms. Gigantes: I am easy on that. I spoke to Mr. Ward about it. If the Attorney General would prefer that Mr. Ward be here when we deal with substitute consent--

Mr. Chairman: Why do we not go with motion 19? Then Mr. Ward is supposed to come, and that will clear up the entire matter.

Mr. Ferraro: I do not want to add to this merry-go-round, but perhaps Mr. Ward's attendance is circumvented by the attendance of the Attorney General. I thought Mr. Ward was coming, and then the Attorney General--

Hon. Mr. Scott: So did I.

Mr. Chairman: All right. We have government amendment 19. Ms. Hart, if you would get ready to move that, we will deal with motion 19, then come back to motion 14 to get some order to our proceedings.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(1c) The said act is amended by adding the following section:

"8a(1) A child who is 12 years of age or older but less than 16 years of age, who is an informal patient in a psychiatric facility and who has not so applied within the preceding three months may apply in the prescribed form to the review board to inquire into whether the child needs observation, care and treatment in the psychiatric facility.

"(2) Upon the completion of six months after the later of the child's admission to the psychiatric facility as an informal patient or the child's last application under subsection (1), the child shall be deemed to have applied to the review board in the prescribed form pursuant to subsection (1).

"(3) In determining whether the child needs observation, care and treatment in the psychiatric facility, the review board shall consider,

"(a) whether the child needs observation, care and treatment of a kind that the psychiatric facility can provide;

"(b) whether the child's needs can be adequately met if the child is not an informal patient in the psychiatric facility;

"(c) whether there is an available alternative to the psychiatric facility in which the child's needs could be more appropriately met; and

"(d) the child's views and wishes, where they can be reasonably ascertained.

"(4) The review board by an order in writing may,

"(a) direct that the child be discharged from the psychiatric facility; or

"(b) confirm that the child may be continued as an informal patient in the psychiatric facility.

"(5) Nothing in this section prevents a physician from completing a certificate of involuntary admission in respect of the child.

"(6) Sections 33, 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (1)."

Mr. Warner: For starters, can someone from the government clarify what is meant by that wording, "with necessary modifications"?

Mr. Sharpe: The procedural provisions were designed primarily to deal with reviews on civil committal hearings--patients appealing where there is a certificate in force committing them to the hospital. Then it speaks in terms of reviewing the certificate, doing things with the certificate and periods under which the certificate is valid.

There are within those procedural subsections, of course, other rules relating essentially to how the board operates in terms of fairness and due process.

The notion of "with necessary modifications" is you do not read it technically, that where it says "for certification," it is not to be applied here. Here there is no certificate. A young person is not committed in the circumstances under which the amendments were developed. What it means is that, substantially, the procedural protections set out in those provisions will apply to a hearing the board conducts where a child wants to have a review of his stay in hospital, but it is not a verbatim application of the words. In other words, "necessary" means only to make it conform to the principles the board is reviewing in this case.

Mr. Warner: You are not the draftsman of this, but why was the last wording you used, "not conforming to the principles," not used rather than "with necessary modifications"? To me, "with necessary modifications" is less definitive than the phrase you used, "complying with the principles as set out," etc.

Mr. Sharpe: It is a drafting style--I have seen it in other statutes--whereby you do not have to repeat all of the same provisions, making small changes and modifications because of the other issues the board is considering. It is a standard phrase. Perhaps the draftsperson can speak to it.

Interjection.

Mr. Sharpe: Yes; exactly.

Ms. Baldwin: It is a frequently used phrase in the statutes. It is understood by the courts to mean what it has been used to mean through the years, and therefore, there does not seem to be any reason to depart from it.

In this particular revision it is conceivable it is not even necessary. The words certainly are not harmful. It is conceivable it is not necessary, but this particular provision had to be drafted quickly enough that there was no opportunity to be absolutely sure. With that in, I am absolutely sure we will not have a problem.

Ms. Gigantes: Can we ask someone from the government to explain a case for us so that we understand the implications of what we are looking at here in the proposal? Can you run us through an example?

Mr. Sharpe: Let us say that a 14-year-old is admitted to a psychiatric facility on the signature of a parent or guardian--say, the children's aid society. For example, he is admitted to the adolescent unit at the London Psychiatric Hospital. He is technically an informal patient. He has not been committed. He is in the hospital because he needs treatment, and the parent or guardian agrees with the doctor that he needs to be in the hospital.

5:50 p.m.

Under this draft there is also the new motion 19--it was not read out, but it appears in your package with subsection 31(lc), the second part--which says, "The officer in charge shall give notice of the child's right to apply to the review board" and will also give notice to the legal aid. It can be read in conjunction with subsection 8a(1). This child has a right to apply to the review board to inquire into whether the child needs the observation, care and treatment provided in that psychiatric facility.

The considerations the board must go through include, of course, whether the child needs the observation, care and treatment of a kind provided in that facility, whether the child's needs can be adequately met if he or she is not an informal patient in that facility and whether there is an available alternative. It must be an alternative that is available. One does not want to take an ill child and just order him out of hospital when there is no other place that is willing to take him in which the child's needs can be more appropriately met. Finally, there are the child's views and wishes, where they can be reasonably ascertained.

If the review board conducts a hearing, there is legal aid, which is the model consistent with other notification provisions in the statute involving involuntary patients. There are rights advisers and patient advocates, who would have the responsibility, presumably, to speak to children in these circumstances and let them know what their rights are. Where those children desire to trigger a review of this kind, then all of the provisions that apply generally to civil committal hearings would apply equally here.

Ms. Gigantes: Which section would trigger the rights advisers' involvement?

Mr. Sharpe: That is the new motion 19, which is subsection 31(lc). It is the third page in your package, (1b) in that package. That is the requirement that notice be given to the child and to the area director under legal aid. It is essentially the same provision we have now in section 30a of the act.

Currently what happens is that the area director passes on those notices--the notices now are notices of committal, forms 3 and 4--in the government hospitals to the patient advocates and in nongovernment psychiatric facilities to rights advisers.

Ms. Gigantes: But there is nothing in (1b) that says it will happen in this case.

Mr. Sharpe: No, but this is the mechanism that is currently in force in terms of legal aid responding to the notices. The expectation is that it would be the same mechanism when they received these notices.

Ms. Gigantes: Why would we simply expect it? Why would we not spell it out?

Mr. Sharpe: It is a mechanism that is working well now, as I understand it, for involuntary patients.

Ms. Gigantes: Yes, but those are adults. Is it clearly the government's intent that rights advocates would be--rights advisers? what are they called?--that rights advisers would be involved in these cases?

Hon. Mr. Scott: Yes.

Ms. Gigantes: Why do we not say that? Can you say it?

Mr. Sharpe: You would want to spell out the duties of the area directors when they receive these notices? Is that correct?

Ms. Gigantes: Yes.

Mr. Sharpe: In other words, you would go on to say something to the effect that they have an obligation to ensure that someone attends at the facility and provides the child with an explanation of his rights.

Ms. Gigantes: Yes.

Hon. Mr. Scott: The theory, if I am not wrong, is that this wording has triggered the new program, which is working well. The assumption is that the same wording will have the same results. To introduce new wording with respect to one program or the other may create the sense that there is something different between them.

Ms. Gigantes: The assumption may be the other way around, that while we are creating new wording for children, if we do not specify that notice to legal aid means the involvement of the rights adviser, we have left it out on purpose.

Hon. Mr. Scott: The point of it is that we have used, with respect to children, precisely the same wording that has triggered the outreach for adults. It is working well in the case of adults. If you now introduce the same language, it will continue to work well when applied to children under 16. If you use different language, someone out there is going to think that different things were intended, one as against the other.

It is one of the advantages of using consistent language rather than different language. Different language often suggests to judges and others different treatment, and that is not desirable here.

Ms. Gigantes: I am in a quandary over that. We are talking about people who are dealt with quite differently, people not of the age of majority.

Mr. Warner: What is the reference to adults now?

Ms. Gigantes: It is this language.

Mr. Warner: That is all.

Ms. Gigantes: That is all, that is what we are told. I am sorry I interrupted, but we may have to come back to it. We have the notice now to legal aid and that supposedly triggers the involvement of the rights adviser.

Mr. Warner: That is based on assumption rather than something written down.

Hon. Mr. Scott: It is based on existing programs.

Mr. Warner: But is the reference to the program in the act? There is no reference now and the program is functioning.

Hon. Mr. Scott: Yes.

Mr. Warner: Under this program it is assumed, when you include children aged 12 to 16, that they become part of the program, although you do not have to make specific reference to it.

Hon. Mr. Scott: If you use the present language you trigger whatever program is applicable. If you use other, more precise, language and it becomes apparent that another program may be the appropriate delivery method, you have to come back and amend the statute.

Ms. Gigantes: If we leave that aside, we have the child who has had legal aid notified on his or her behalf, then a rights adviser is presumably involved. Then what happens?

Mr. Sharpe: The child is advised by the rights adviser. Remember, under this bill, there is also an obligation for the hospital to tell the child directly of his rights. It is an added protection to have the rights adviser there. He is told of his right under 8a(1) to require a hearing of the board as to whether that psychiatric facility is the best place for him; whether another place would be better; or whether he needs to be in any facility at all. His wishes are to be taken into account by the review board in addition to other factors set out in subsection 3.

If the board concludes he should not be in that facility under subsection 4, it can direct the child be discharged. If the board decides it is appropriate for the child to stay, it will confirm his stay as an informal patient. The same appeal rights to court exist for other matters coming before the review board.

Ms. Gigantes: If the child makes an application, let us say in the first week, is it heard before the three months' period?

Mr. Sharpe: The procedural amendments we have not yet reached have various timing mechanisms built into them regarding when a board must hold a hearing after it receives notice.

Ms. Gigantes: That would be the same as for an adult patient.

Mr. Sharpe: That is the intention.

Ms. Gigantes: How does that compare with the Child and Family Services Act?

Mr. Sharpe: I understand the Child and Family Services Act has a mechanism that requires a hearing within 45 days. I am not that familiar with the act, but I do not believe it is on application of the child. It is automatic after an extended period of 45 days or 90 days. Staff here can speak better than I on the content of that statute.

Ms. Gigantes: Can staff here speak better than Mr. Sharpe on the content of the statute?

6 p.m.

Hon. Mr. Scott: Allan, can you deal with this?

Mr. Shipley: I am Allan Shipley, from the policy development division of the Ministry of the Attorney General.

We have to keep in mind that the Mental Health Act and the Child and Family Services Act, 1984, are trying to do different kinds of things in different kinds of circumstances. The Child and Family Services Act deals with a much broader range of problems than the Mental Health Act. Therefore, it approaches these in a much broader manner.

In some circumstances, a child can end up in a psychiatric facility, just as he could under the Mental Health Act. In some of those circumstances--again, not in every one--the provisions of the Child and Family Services Act relating to voluntary access to services and, specifically, a residential placement advisory committee, do come into effect.

Let us say the child is eligible for a review by the residential placement advisory committee; he is in a placement which falls under the jurisdiction of the act. He is in a particular kind of institution--and again, the act has many specific details.

If he is in an institution that has more than 10 beds; there is an automatic right of review. If the placement is intended to last, or actually lasts, 90 days or more, the review has to be commenced within 45 days. If he has had that review within the first 45 days, a subsequent review does not take place--and this is another ministry's legislation--for nine months.

Under the Mental Health Act, the timing for the reviews being proposed in these amendments is related to the timing for reviews of involuntary patients. We have tried to keep the child's rights under the Mental Health Act consistent with the rights of other people under that act, partly because the Child and Family Services Act deals with a much broader range of placements than just those in psychiatric facilities. It deals with placements in facilities for the mentally retarded, and other kinds of special care facilities. They do approach it in a different way.

Also, the kinds of things reviewed under the Child and Family Services Act are more limited than the reviews being proposed in these amendments. There is no actual review of the basic admission under that act. It seems to

be simply a review of whether this is the proper placement after the child has been admitted. Is this the right facility? Should he be in hospital A or hospital B? It really is a review of the placement, not the admission, and whether the child needs to be there.

The powers of the committee under the Child and Family Services Act, in the first instance, are simply advisory. It does not have any power to direct the discharge, as is proposed in these amendments.

I hope that is not too confusing, but I am afraid it is difficult to compare the two because they are trying to do different kinds of things, for the most part. There is a very small area where they overlap.

Ms. Gigantes: In both cases we could be dealing with the placement requested by the parent or guardian.

Mr. Shipley: There is probably a small area where they would overlap. Most placements under the Child and Family Services Act would be placements by a children's aid society, not by a parent. We have to accept the theoretical possibility that a parent could place a child in a children's mental health facility in such a way that the Child and Family Services Act would apply.

Ms. Gigantes: When you compare the procedure you have described for the Child and Family Services Act, you are talking about an automatic review within 45 days.

Mr. Shipley: Probably, if it is an institution, with all those qualifications.

Ms. Gigantes: It would be a month and a half. Under this amendment we would have an automatic review only after six months.

Mr. Shipley: If the child had not applied before.

Ms. Gigantes: Yes.

Mr. Shipley: If you have it early under the Child and Family Services Act, then you do not get another one for nine months. It is a matter of having to make the choice between being totally consistent with the Child and Family Services Act and being consistent internally within the Mental Health Act, basically to achieve the same objective.

Ms. Gigantes: There is no automatic review within the Mental Health Act for any other patient.

Mr. Shipley: I understand there is a review at about six months for involuntary patients.

Ms. Gigantes: For involuntary patients, is there an automatic review?

Mr. Shipley: Yes.

Ms. Gigantes: I still find this very confusing. I would like to hold it over because we got it only today.

Mr. Chairman: That is a reasonable request. It is a relatively complicated section and if there is concurrence by the committee that we hold

it over in an attempt to digest it a little more thoroughly, then we can come back to it. However, that is a committee decision.

We have a motion on the floor to approve this amendment. One of two things can happen. Ms. Hart can withdraw it and then place it again, or we can stand it down.

Mr. Warner: Standing it down is probably the easiest way to deal with it, and I so move.

Mr. Chairman: Mr. Warner moves that we stand it down. That motion will take precedence over the motion to approve. Do we agree to stand the motion down?

Agreed to.

Mr. Chairman: Can we move to motion 19?

Mr. Warner: Why do we not do motion 14?

Mr. Chairman: That is okay with me. Do you want to move back to motion 14 now?

Mr. Polsinelli: How about motion 17?

Mr. Chairman: I am trying to keep them somewhat in order. With the Attorney General (Mr. Scott) here, we can do motion 14.

Ms. Gigantes, these are your motions.

Mr. Polsinelli: Does this replace completely motion 14?

Ms. Gigantes: You guys are so much faster than I am.

Mr. Warner: Is it the one that says: "Clause 29(3)(e) is amended by striking out 'nearest relative,' etc.?"

Ms. Gigantes: Which one are we looking at? This was the one I had hoped Mr. Ward would be around for so that we could discuss my motion to replace motion 45.

Hon. Mr. Scott: We object to this because this is the kind of recommendation that may come out of the Advisory Committee on Substitute Decision-Making for Mentally Incapable Persons. We have been around this before, and I have asked the committee to wait for the report of the Fram committee. The Fram committee is an Attorney General's committee; it is not a Ministry of Health committee. Perhaps I can help you. If that was why you wanted Mr. Ward, I can--

6:10 p.m.

Ms. Gigantes: Mr. Minister, I do not know if you are aware that I have replaced my previous motion--which was to be dealt with in a peripheral manner--with a draft motion which is now numbered, replaces motion 45, and also replaces motion 47.

Hon. Mr. Scott: It is a new scheme.

Ms. Gigantes: Yes, it is a new scheme drafted by legislative counsel at my request and on the basis of a draft of the report by the Advisory Committee on Substitute Decision-Making for Mentally Incapable Persons, chaired by Stephen Fram, dealing with substitute concerns. That is why I was hoping the committee, and I am hoping you, would take a look at it. I believe the scheme proposed in that draft report is better than the one we have before us in the bill and in the amendments.

Hon. Mr. Scott: The difficulty I have is one I have expressed before. We are awaiting the Fram committee, and I think we should do that. The Fram committee has shared with everybody its drafts and the various drafts submitted to it. There is nothing secret about what it is doing, and there should not be particularly, but the committee has not made its decision. The reason we have the committee is to get the best recommendation that will meet the concerns of the various perfectly legitimate interest groups on the committee.

We are acting on a draft. The reason you emphasize that this reflects a draft is out of deference to the Fram committee. Rather than reflect a draft, we would do better to reflect its final recommendation.

Ms. Gigantes: As it is your committee, perhaps you could tell me whether, to your knowledge, it has received the approval of all involved on the committee. My understanding is that it has.

Hon. Mr. Scott: I cannot tell you that is so. The drafts are being circulated over the summer, and we would hope that at the end of the summer the committee would form some conclusion about its drafts. I will share that with you at the earliest possible moment. It will be a misfortune if the Fram committee does not opt for this mechanism. It may opt for some other one that it judges to be better.

Ms. Gigantes: What will be the misfortune?

Hon. Mr. Scott: The misfortune will be that we will have written into the act a provision that it perhaps will judge unsatisfactory.

Ms. Gigantes: Well then, it can report and suggest to us another scheme and we can amend it just as well as we can amend the scheme now in the bill.

Hon. Mr. Scott: I will not go on about this, but since we have established the committee that is dealing with the very broad topic which will require amendments to a number of statutes, we would like it to bring forward its proposal at one time, have it reviewed by our colleagues, have all the moving parts examined to see how they work one against the other. We would also like it to compare the schemes under this act and that act and the other act and then either to respond to the recommendations of the committee or not. It just is anticipating a very complex recommendation that has yet to be made.

Ms. Gigantes: The mandate of the committee is wide. However, it has dealt specifically with the question of psychiatric treatment. The amendments I have proposed use those specific recommendations in a draft form, which I am told has achieved consensus in the committee representing all the interests you have described. I do not understand why we should proceed in 1986 with a less liberal, if I may say--

Hon. Mr. Scott: With a small "l" before that.

Ms. Gigantes: --scheme of determining how substitute consent is given in psychiatric treatment than one which is available to us right now from the committee.

Hon. Mr. Scott: It is not available to us right now from the committee. That assumption is based on a draft that has been circulated and a conclusion you have drawn that everybody will accept the draft in the end. You may be right and you may be wrong.

Ms. Gigantes: If I am wrong, they can come back and amend it just as easily as we can amend the quite imperfect scheme that now exists in the bill. Is that not so?

Hon. Mr. Scott: First, I am not sure that in this business you should change rights all that quickly, every six months. Second, your assumption is that the committee will see nothing wrong with what you propose. It may conclude that is not the way to go at all and therefore the people who have been forced to go that way may, in its judgement, be disadvantaged. I do not see the point of establishing a committee if we are going to try to predict its conclusions in an ad hoc way.

Ms. Gigantes: I do not think there is anything predictive about that. If I understand it, what we have is a complete, finally approved and totally consensused draft that deals with substitute consent for psychiatric treatment. It introduces two good concepts in my view. One is that a competent patient shall be allowed to sign a consent for psychiatric treatment and give power of attorney to someone to give consent if he or she then becomes incompetent. The other is that it removes a very unpalatable consent mechanism, which I believe would allow an estranged spouse to be the third person up in determining consent.

Hon. Mr. Scott: This committee dealt with the proxy question a couple of weeks ago and defeated it on the very ground I now advance, so I will not pursue it. You have come up now with a different proxy scheme that is a modification of the one that was defeated by this committee. It may be passed, but it was defeated.

Ms. Gigantes: It was defeated on your appeal that we wait for the committee.

Hon. Mr. Scott: Yes.

Ms. Gigantes: In the meantime, the committee's draft and totally consensused suggestion--

Hon. Mr. Scott: With the greatest respect, that is not an accurate statement. The committee has circulated a draft that essentially deals with principles. The committee may consider that and approve it, may reject it, may change its mind or may go in some other direction bearing in mind that it has a number of other responsibilities. In addition, it will be one of the committee's functions to produce legislative language.

Ms. Gigantes: You are arguing two things. You are arguing that it is best to live with the old scheme, which we all know is inadequate with respect to the equality rights provisions of the Canadian Charter of Rights and Freedoms, because we want to wait for the committee. On the other hand, when we have a draft from the committee that looks a whole lot better, you say we may have to wait too long if we are going to amend something the committee may

not finally decide upon. You are arguing two sides of the same question. One is that it is going to take us too long to amend something that may not be what the committee finally decides on, and we do not want to have to live with mistakes if the committee decides on something else. The other is that we should leave a rotten scheme in place because we will be back to amend it quickly. You cannot have it both ways.

Hon. Mr. Scott: I will add just this: If you had developed this proposal out of your own head, it might still have virtues, but I think in those circumstances you would defer to the Fram committee.

Ms. Gigantes: No, I did not, as a matter of fact. I thought it was better to go ahead, wait, and if the Fram committee had something that--

Hon. Mr. Scott: Let me put it this way: The rest of the committee indicated it would prefer to defer to the Fram committee.

Ms. Gigantes: That is fine.

Hon. Mr. Scott: The only difference between that situation and the present one is that you say you are prepared to assure us that the committee will go with this draft and no other, and that the proposed legislative language is the legislative language the committee will come up with.

Ms. Gigantes: No, I did not say that at all. I said you cannot say this has not received consensual approval from the committee. As far as we know, it has.

Hon. Mr. Scott: We know that the committee has not considered draft language and that it will do so. However, I defer to the committee.

Mr. Chairman: Ms. Gigantes, we probably need you to put the motion for this amendment on the floor formally. We do not have it yet.

Ms. Gigantes: I will be happy to do it, but which amendment are you talking about? Are you talking about the one numbered 14?

6:20 p.m.

Mr. Chairman: Yes, subsection 29(2) and clause 29(3)(e).

Ms. Gigantes: I think you are talking about the one labelled 14 in our copies.

Mr. Chairman: That is right.

We have spoken to your proposal at some length. The time has come for us to determine whether one position or the other should be favoured at this juncture. We have about five minutes left if there are any votes. I anticipate the bell may ring shortly; it also may not.

Ms. Gigantes: I will be glad to put number 14.

Mr. Chairman: Ms. Gigantes will put the motion. If there are any other comments from committee members, I will take them at this point.

Mr. Polsinelli: Can we deal with this as we dealt with the past package of amendments dealing with substitute decision-making; that is, if

this vote does not carry, Ms. Gigantes will agree not to put the balance dealing with substitute decision-making?

Mr. Chairman: That would be reasonable.

Ms. Gigantes: That is fine with me.

Mr. Chairman: The logic flows through the balance of the amendments. Mr. Polsinelli's point is well taken. With Ms. Gigantes's concurrence, if the first one carries, we will proceed. If it does not, the others will die.

Ms. Gigantes: I will look for Ms. Baldwin's assistance on this, but I believe I will amend it.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(lg) Clause 29(3)(e) is amended by striking out 'nearest relative' in the third and fourth lines and inserting in lieu thereof 'person authorized under subsection 35(2) to consent on behalf.'"

Is there any further comment? Are you ready for the motion? Shall the motion carry?

Motion negatived.

Mr. Chairman: This means the others go as well according to the agreement we reached. Is that correct?

Mr. Polsinelli: Is this all of the new package? Are there other motions dealing with that?

Ms. Gigantes: There are other motions.

Mr. Chairman: They go as well.

Ms. Gigantes: This has the effect of removing the new package of motions labelled as replacing motions 45, 47 and 48. That is it. I stand to be corrected.

Mr. Chairman: Have you not withdrawn motion 20, Ms. Gigantes?

Clerk of the Committee: No, but it is related to 19 and 5a.

Mr. Chairman: All right. Ms. Gigantes, your motion 20 is being held with the others, 5a and 19, that we will deal with.

Clerk of the Committee: Motion 21, is that not right?

Mr. Chairman: Not yet. I will get Ms. Hart to move it in a moment.

You may not find these numbered in your package because they were late insertions. Number 21 will be numbered, but in your package you can see the numbers at the bottom.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3i) Subsection 31(1) of the said act is amended by striking out 'chairman of the regional review board having jurisdiction' in the second and third lines and inserting in lieu thereof 'review board.'"

Motion agreed to.

Mr. Warner: Number 22 is the same.

Mr. Polsinelli: A number of amendments are tied together. I believe number 17 is also tied in with numbers 21 and 22 which we are dealing with. Perhaps we should go back to number 17. I do not recall it having been carried in terms of establishing the new review board. Unless I am mistaken, we did not take a vote on it. Was it not yesterday we were discussing this motion?

Interjection: It was right at the end of the day.

Interjection: You did not come back.

Mr. Polsinelli: So this has been carried?

Mr. Chairman: Yes.

Mr. Polsinelli: I apologize. Number 22 is along the same line.

Mr. Warner: It is the same as what we just passed.

Mr. Chairman: Let us deal with number 22.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3j) Subsection 31(4) of the said act is amended by striking out 'chairman of the regional review board having jurisdiction' in the fourth and fifth lines and inserting in lieu thereof 'review board.'"

Motion agreed to.

Mr. Chairman: The one immediately prior to that is Ms. Gigantes's motion on subsection 31(2). I am advised we would have to debate the entire package in dealing with this item. It may be too cumbersome to deal with in the time available.

The committee adjourned at 6:29 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
MONDAY, JUNE 16, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Poirier, J. (Prescott-Russell L) for Mr. Callahan

Clerk: Mellor, L.

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

From the Ministry of Health:

Sharpe, G., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 16, 1986

The committee met at 5:27 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

On section 31:

The Acting Chairman (Mr. O'Connor): I see representatives of all three parties are here and a quorum is present. We can proceed.

I apologize on behalf of our regular chairman, Mr. Brandt, who is unavailable today to take the chair. Our vice-chairman, Ms. Fish, is required at another committee. She is the critic for the Ministry of the Environment and its estimates commence today. She has asked me to substitute. I seek the approval of the committee to take the chair. If there no objection, we will proceed.

The next order of business is motion 23 in the package that was distributed some weeks ago. It is a government motion and I ask Ms. Hart to move it when she is prepared.

While you are looking at that motion, I draw to your attention two new amendments provided to us today that are to be inserted in your packages. One is a government motion to subsection 17a(3a) of the bill. It is a Human Rights Code amendment. The other is an amendment by Ms. Gigantes on subsection 31(lc). I am not sure of the exact order they should be in.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsections:

"(3k) Section 32 of the said act, as re-enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67, is repealed and the following substituted therefor:

"32. Except as provided in section 32a and subsection 33f(ld), where a hearing is required or an appeal is taken against a certificate of involuntary admission or a certificate of renewal and the time period for the certificate under subsection 14(4) expires before a decision is rendered, the hearing or appeal shall be deemed to be abandoned whether or not the certificate is renewed.

5:30 p.m.

"(31) The said act is amended by adding thereto the following section:

"32a(1) Where, before a certificate of involuntary admission, a certificate of renewal or an extension of a certificate expires, the patient or the person acting on the patient's behalf files a notice with the review

board requesting that the time for conducting or completing a review be extended beyond the time period for the certificate under subsection 14(4), the review board shall extend the certificate.

"(2) An extension of a certificate under subsection 1 is effective,

"(a) for the next period of time provided for renewal of the certificate under subsection 14(4) or any shorter period set by the board;

"(b) until the certificate is rescinded; or

"(c) until the patient or the person withdraws the request for review,
"whichever first occurs.

"(3) Subject to subsection 14(5), when a patient withdraws a request for review of a certificate, a physician may complete and file a renewal of that certificate.

"(4) A renewal of a certificate under subsection 3 is effective for the next period of time provided for under subsection 14(4).

"(5) Within 24 hours after receiving a notice requesting continuance under subsection 1, the review board shall notify the officer in charge of and the attending physician at the psychiatric facility where the patient is detained of the extension of the certificate.

"(6) Where a certificate of involuntary admission or a certificate of renewal is renewed under subsection 14(4) after notice has been filed under subsection 1 but before the psychiatric facility where the patient is detained is notified of the extension, the certificate of renewal shall be deemed to be a nullity and the extended certificate remains in effect for the period provided under subsection 1."

The Acting Chairman: Before we proceed with debate on that, perhaps we should deal with Ms. Gigantes's amendment to the first of these subsections, which will be found in your package as a substitute for motion 24.

Hon. Mr. Scott: So you will have all the material before you, government motions 27 and 36 are also part of this scheme. They do not have to be moved now, but when we are discussing it, we will also be discussing motions 27 and 36, which is one way of doing it against the motion Ms. Gigantes now is going to give us.

Ms. Gigantes: I am in agreement with that. We should discuss the principle involved in the two major motions associated with the process here. I am quite happy to do that. In my view, that means we will talk about the government motion just introduced and look at my motion as an alternative, which says at the bottom of the second page that it replaces motion 24. It is in that small package of new motions that was circulated last week. I believe it was last week. I have lost track of my weeks between bells.

Hon. Mr. Scott: The last time the bells were ringing.

Ms. Gigantes: It was somewhere around there. I would like to speak to the proposals. In my view, the government proposals have a major problem. Perhaps we could have some discussion of this with the minister and/or ministry staff. When we get to the process that involves a patient who has

made an application for review and the certificate expires before the review is held, the only way the patient or the patient's proxy can make sure there will be a review is to permit the certificate to continue. That seems terribly unjust.

If I am an involuntary patient and have made an appeal motion before the review board and before I get to the review board the certificate under which I am held expires, I have a choice. Essentially, my choice is to say, "Go ahead and renew my certificate and then I can proceed to the review board," or I say, "I am willing to forget the whole matter." That seems unfair. Perhaps there is something I do not understand in this process.

Hon. Mr. Scott: I will ask the Ministry of Health staff to deal with that and set out the position of the government amendment.

Mr. Sharpe: Motion 27, which has not been read out yet, will reduce significantly the period in which the board must conduct a hearing and make a decision. It is currently a month. It is going to be reduced to seven days. With respect to the applications by patients to review boards, it will only be the initial certificate--form 3, which is the two-week certificate--with which you would likely run into that kind of overlap problem; it might expire before the board meets.

It is an acute problem now because the board has a longer period, but with the setting up of 12 boards, which is the recent situation, to replace the five boards that used to sit, and with the proposed amendment that will reduce the response time that is mandated to seven days, we are hoping that many of the difficulties that you have described, and that have existed, particularly with the early certificates, will be addressed.

One of the difficulties with the notion of renewing the certificate and then deeming that it is an extension of the old certificate is that the criteria for the certificates may well differ. For example, the form 3 criterion may have been that the person was significantly deteriorating; the third standard, serious impairment. He has now been stabilized in hospital. The standard that one now is concerned about, in extending it further and renewing it, is that he might be a danger to himself. That has become a more acute problem.

The problem is not so much with respect to the initial application to the review board as it is with the appeal of the review board decision in court. There, the board that made the decision had before it a certificate with certain criteria. It is that certificate that now is being appealed to court. If you now allow the completion of a new certificate and deem it an extension of the old one, then apart from the court now looking at a different form from what was before the board, you may have a different standard altogether. It is no longer an appeal of what the board did; it is a new review by the court.

Ms. Gigantes: That is technically true. However, in practice, the condition of the patient may have changed as a result of treatment. It is the initial certificate that needs review. It is the treatment administered between the issuance of the initial certificate and that of subsequent certificates that produced the deterioration. That is a practical consideration we have to look at.

I cannot understand how we could set up in legislation a situation in which somebody either agrees to be an involuntary patient, to a continuance of

the certificate, or perhaps go through a review board hearing--the time may be shortened. Certainly, there should be a court examination of the board's confirmation of the initial certificate. We are contemplating a very unhappy process here.

Mr. Sharpe: Under our model, the extension of the certificate can be triggered only by the patient; it is at the patient's request.

Ms. Gigantes: Yes, but that means I have a choice. I can either drop my appeal or I can agree that I am going to be held involuntarily, which is what I am appealing in the first place. Surely it is going to diminish my case if I agree to be held involuntarily when I am asking for a review of precisely that situation.

Mr. Sharpe: As I indicated, it would not be a terribly serious situation for review board matters in that no patient would be continued beyond seven days.

5:40 p.m.

Ms. Gigantes: Excuse me. If I were put in the situation of being an involuntary patient and I felt very strongly that was not an appropriate situation for me to be in and somebody said to me, "You can have it reviewed or you can appeal the review board review, but you have to agree to the extension of the certificate," then my choice is either to say that I should be held so I can go ahead with the legal process or to drop the matter. There must be many patients who, even if they are released before the review board decides they should be released, want the opportunity to have the matter heard officially and to have an official pronouncement on it.

Hon. Mr. Scott: I understand the problem to which you are adverting, which is essentially that we do not like and it is against public policy that there should normally be reviews of orders that have expired and been replaced by other orders. How does your proposal solve the problem?

Ms. Gigantes: It means that the review you would be dealing with would be a review of the matter that was originally appealed.

Hon. Mr. Scott: Yes, but at that point, the patient would not be held under that certificate.

Ms. Gigantes: It is a nice catch 22.

Hon. Mr. Scott: I understand your attack, if I can put it that way, on the government proposal, but your amendment does not solve the problem.

Ms. Gigantes: Yes, it does. For example, suppose I am being held because I am a danger to myself or other persons, and a new certificate is issued during the period in which I am launching an appeal either to the review board or the court. The grounds for holding me now as an involuntary patient turn on the fact that my situation and state of mind are deteriorating and therefore I need treatment. That means I cannot get anybody to deal with the initial act. I may have been subjected to treatment that has made me deteriorate.

Hon. Mr. Scott: That is the problem. I do not understand any solution for it in your recommendation. I understand the problem.

Ms. Gigantes: It means I can continue to have the initial decision reviewed without saying I agree to a renewal of the certificate, so that I am dealing with the initial matter that I wanted appealed.

Hon. Mr. Scott: Let me put this proposition to you and let us take the first step, which is the two-week period. Let us say the patient appeals or seeks to have reviewed the order under which he is held and the two weeks expire. That is what we are dealing with. No new order is made. That is situation number one: The patient is free to go home and no new order has been made. In the second scenario, a new order has been made. You seek a review of the first order.

Ms. Gigantes: That is right.

Hon. Mr. Scott: The trouble is that at that stage the first order will be absolutely meaningless, and whichever way the review comes up, it will not make any difference to the hospital or to the patient.

Ms. Gigantes: How can you say it is meaningless?

Hon. Mr. Scott: Let me put it this way: There will no remedy that can be granted as a result.

Ms. Gigantes: You are wrong, because the remedy that is sought is a decision on the original certification that I went through.

Hon. Mr. Scott: I hope you will forgive me for repeating it, but that is what the courts call a moot point. They will not decide that kind of point for very good reasons. You do not want to decide a moot point because there is no interest in anybody sustaining it. The hospital or the responding authority will just say: "We do not care what the decision is. It is meaningless so we will not appear in the hearing." The victory that the patient will get if the appeal is allowed will be meaningless because it will be unopposed.

Ms. Gigantes: No, because you are proposing there will be two different sets of reasons for holding me in involuntary patient status. The first is that I am an immediate danger to myself or to other people. If I want to appeal that and the hospital or the physician, or whoever makes the decision, turns around and says in the meantime, before my appeal is heard at either the level of the board or the court, that I now have to be held on a certificate that is being brought in because the condition has deteriorated, then the status of the original decision is something that should still be appealable.

Hon. Mr. Scott: Let me put it to you this way and then I will quit. Assuming it was appealable, if I were the hospital or the doctor, I would simply allow the appeal on all expired orders to go unopposed. There could be no damage or risk or issue as a result of doing that. I would not allow appeals on live orders--that is, orders that were currently affected--to go unappealed.

Ms. Gigantes: That is why my amendment, the amendment just prior to the one which I have been addressing in major part, which is also related to motion 24, to subsection 31(2), says that the certificate is extended. In other words, what I am suggesting with the double-barrelled approach is that,

first, the original certificate is considered the one which is in place until the appeal is heard.

Hon. Mr. Scott: Kafka would be entertained by the creation of this scheme. He would regard it as something that he himself could not have imagined.

Ms. Gigantes: It seems to entertain you.

Hon. Mr. Scott: Let me tell you why. This act is not some draconian scheme to punish people. It is a medical statute that is designed to help them and it is important that procedures be built in that are meaningful, that will allow review of the process, in so far as they are detained against their will. I am sure all parties agree with that.

Your penalty, if I can put it that way, for the fact that the initial order might have been improperly granted, is to say that the second order will be equally defective because the first one was. That is why you extend it. All I am saying is that it has nothing to do with medicine and everything to do with some kind of penal consequence.

I would have thought what we want to do here is to develop a way to do everything we can for a patient, held over his objection by an order, to see that the order can be reviewed. One of the problems is when the holding orders become of very short duration, as they should be.

Ms. Gigantes: That is for the review board, not for the court.

Hon. Mr. Scott: We can solve the whole problem if you will agree that the first holding order will be one year. We do not want to do that. We want to make the first holding order as short as possible. When you make it as short as possible, it is inevitable that you will not be able to get through the court process. If you do this, all you are going to have is people fighting over meaningless orders. When you impose your penalty, that meaningless fight will undercut an order, against the best interests of the patient, which might have been given perfectly properly.

Ms. Gigantes: Suppose I end up in a situation where, for some reason with which I do not agree, somebody has decided I am an immediate threat to my own physical safety or that of some other person and that when I say I am going to appeal to the review board, five days later I am let out. You can either decide whether you are going to have a new certificate or you can drop the case. That means there is no remedy for me.

Hon. Mr. Scott: That is not entirely true. First, you have the remedy which you primarily seek, which is to go home.

5:50 p.m.

Ms. Gigantes: There is more than that involved.

Hon. Mr. Scott: If you want a remedy for false imprisonment, it is there in the common law. If you say, "When confronted with an appeal, you gave up the order and let me go home," then you have an action for false imprisonment, and that action is based on the proposition that there was never any justifiable cause for detaining you. There may be cases where that remedy is used, but I would not have thought it would occur frequently. It is

presumably desirable that the patient have a review mechanism to free him, if he has been improperly held.

Ms. Gigantes: I am sure you will agree that two matters are involved here. As a patient, I question not only whether I have my freedom, but whether the process that took away my freedom, whether for the period prior to a review board hearing or for a period leading to a court hearing, if I insist on going that far, is mine to decide without submitting to a new certificate.

Hon. Mr. Scott: You are seeking something the law has never given in the form you seek. Let us assume you are charged with some misconduct under the Criminal Code. We will leave out bail, which would be the precise parallel because it involves holding for trial--

Ms. Gigantes: Which I would get within a day.

Hon. Mr. Scott: Let us assume you raised hell about it and the Attorney General stayed the action. Within a week or 10 days, you would have got the remedy you wanted, "I want to be out of this thing", and you are out of it. If you want to argue about process, that the action should never have been commenced against you, you sue the Attorney General or the person who swore the information for malicious prosecution.

Ms. Gigantes: No, the two--

Hon. Mr. Scott: It is not no. Yes, that is what you do. It may not be satisfactory.

Ms. Gigantes: The two cases are not parallel because in the one case I am assumed to be competent, unless somebody raises the matter. Further, I will have a bail hearing within 24 hours. Unless it is proved I have done grievous harm to somebody, I will get bail.

Hon. Mr. Scott: Let me put it to you this way. Let us assume bail is refused in a criminal case and you are held for 10 days. You seek a bail review, which succeeds, and you are let out. Let us assume you launched the bail review and are let out before it even comes to a hearing, which would be parallel to this. The bail order is removed before it comes to a hearing.

Ms. Gigantes: But I will still--

Hon. Mr. Scott: There would be no situation in which you could go ahead and have your bail review hearing anyway. The court would say to you, "What you can do is sue for malicious prosecution," or false imprisonment in that case.

Ms. Gigantes: No, the cause of my being held will be tried in court.

Hon. Mr. Scott: No, not necessarily. The cause for which you are tried in court may be very different from the cause that requires you to be held under a bail order. The cause under a bail order is whether you are likely to turn up for trial.

Ms. Gigantes: The cause that will go to court is somebody's judgement, somewhere along the way, that I committed a crime. That is what will be heard.

Hon. Mr. Scott: Unless they withdraw it before you get to court. Then you would be there with legislation like this, saying: "You have withdrawn this case before I got to court; I want the case to go ahead", relying on your deemed provision. "I am entitled to require this case to be tried and, as a penalty, if you are wrong, no other case can be brought against me that is not affected by nullity of the same--"

Ms. Gigantes: All the way through that process I have had the full authority to act of my own volition about my defence, about talking to my lawyer. I have been able to make all my own choices about what happens to me within the framework of the law. That is not true here. We are talking about people who are deemed to be involuntary patients because they are an immediate danger to themselves or someone else. Once that happens, their rights are immediately limited, much more limited than mine would be in jail. True?

Hon. Mr. Scott: No, I do not intend--

Ms. Gigantes: Oh, yes. You cannot say that seriously. Of course they are more limited, because I am assumed not to be capable of making my own judgements regarding treatment or whether I leave the place. I cannot choose a lawyer. I do not have the same rights.

I would much rather be put in the Ottawa-Carleton Detention Centre. At least, when I get to somebody who is going to hear my case, he is going to hear the case for which I was committed or charged. He is not going to be hearing something that happened afterwards, in the view of the person who agreed to my involuntary committal in the first place.

The Acting Chairman: Ms. Gigantes, do you wish to formally put your amendment to the bill, as it has not been read?

Ms. Gigantes: I will put it. I will probably be asked first to put the motion that says "new, follows motion 21." Correct? This motion would say, as an amendment to the government motion, that we add a clause to subsection 32a(2). I will read it.

Hon. Mr. Scott: May I suggest this? Would it be possible to do what we did before, which is that if you vote on the government motion and it is defeated, you are well on your way? If the government motion is sustained, it is pretty clear that yours is not going to be passed.

Ms. Gigantes: No, we will do it this way. It produces the same effect.

Hon. Mr. Scott: It just means that we are going to take 10 minutes while we read your motion.

Ms. Gigantes: No. Mine is a very short motion. Section 31(2) of the said act--

The Acting Chairman: I am sorry. I thought you were reading motion 24.

Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 31(2) of the said act is amended by adding thereto the following clause:

"(d) when a certificate of involuntary admission or renewal that is the subject of an appeal is extended under subsection 32(1)."

Ms. Gigantes: The intent of that is clear. It would mean that under subsection 32a(2), we would have an extra clause saying that the certificate would be an extension so that it could be dealt with.

The Acting Chairman: Any discussion on that amendment? There being none, are we ready for the question? All in favour of the amendment? Opposed?

Motion negatived.

The Acting Chairman: We go next to government motion 23. If Ms. Gigantes agrees, we will proceed as the Attorney General has indicated and vote on that amendment. If it carries, she might consider abandoning her amendments thereafter.

Ms. Gigantes: That is fine with me.

The Acting Chairman: Are we ready to put the question on government motion 23? Those in favour? Opposed?

Motion agreed to.

The Acting Chairman: Would you therefore formally withdraw your motion, Ms. Gigantes, which replaces 24?

Ms. Gigantes: Yes, I will.

The Acting Chairman: We go next to government motion 25.

Ms Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3m) Section 33 of the said act, as re-enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67, is amended by striking out 'regional' in the third line."

The Acting Chairman: This is similar to several amendments previously read and passed. Any discussion on that? All in favour?

Motion agreed to.

The Acting Chairman: Next, government motion 26.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3n) Section 33a of the said act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67, is amended by striking out 'regional' in the fourth line."

The Acting Chairman: Any discussion? All in favour?

Motion agreed to.

6 p.m.

The Acting Chairman: Next, government motion 27.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsections:

"(3o) Section 33b of the said act, as re-enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67, is repealed and the following substituted therefor:

"(1) A review board that receives notice in writing placing a matter before it for decision shall appoint a time and place for and hold a hearing.

"(2) A hearing under subsection (1) shall begin within seven days after the day that the review board receives written notice requiring a hearing or within such longer period as is agreed to by the parties.

"(3p) Section 33c of the said act, as re-enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67, is repealed and the following substituted therefor:

"33c(1) Within one day after the day that the review board completes a hearing under section 33b, the board shall issue its decision.

"(2) In issuing its decision under subsection (1), the board may substitute its opinion for that of the attending physician.

"(3) The review board shall provide to the parties written reasons for its decision under subsection (1) within two days of making the decisions."

Hon. Mr. Scott: Ms. Gigantes's motions marked 28 and 29 are exactly the same in a slightly different format. Can you tell me whether there is any difference?

Ms. Gigantes: None that I can see. The clerk has brought another motion to my attention.

Clerk of the Committee: I have a new package that says it replaces motion number 29 in part; so I kept the old motion number 29.

Ms. Gigantes: I do not have that for some reason.

Clerk of the Committee: The new motion is on subsection 33c(2).

Ms. Gigantes: That becomes irrelevant.

The Acting Chairman: Do I take it then that we can entertain discussion on motion number 27 without regard to the two following motions?

Ms. Gigantes: Yes.

The Acting Chairman: Any discussion? Do we wish the motion put?

Ms. Gigantes: Yes.

- - - The Acting Chairman: All in favour of motion number 27?

Motion agreed to.

The Acting Chairman: We should go on to motion number 30.

Hon. Mr. Scott: Ms. Gigantes has formally withdrawn it.

Ms. Gigantes: Yes. That should be withdrawn.

The Acting Chairman: All right. They are withdrawn although I do not think they were formally put. In any event, they are disregarded. We are on to motion 30 or is that withdrawn also? Motion 31 to start?

Ms. Gigantes: Yes.

Hon. Mr. Scott: Section 31 is one of my favourites.

The Acting Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3q) Section 33e(i) of the said act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67, is amended by striking out 'regional' in the first and in the eighth lines."

Hon. Mr. Scott: Motions 31 to 35 are exactly the same. They are on the striking out of the word "regional" in the first line. Is there any possibility of passing them all together without reading them?

Ms. Gigantes: It does not take that long. Perhaps we could do it by our order.

The Acting Chairman: They have to be read. Is motion number 31 carried?

Motion agreed to.

Ms. Gigantes: I have an amendment that comes before motion 32. It is in the new package of amendments.

The Acting Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 33f of the said act is further amended by adding thereto the following subsections:

"(7) Despite subsections (4) and (6), where a court reverses a decision of the board revoking a certificate of involuntary admission or a certificate of renewal, the court shall not confirm the certificate or refer the matter back to the review board, but may in its discretion make an order for the assessment of the patient by a physician.

"(8) An order under subsection 7 shall have the same force and effect as an order under section 10."

Hon. Mr. Scott: May I ask Ms. Gigantes to explain what is intended here? I am not sure we understand it.

Ms. Gigantes: It means that where a review board has said a patient shall not be certified, and a court decides that it is a questionable decision, the court shall not simply refer the matter back to the review board or confirm the certificate itself. The court shall merely ask for another assessment if it so wishes.

Hon. Mr. Scott: The problem is that we have taken it out of place, in a certain sense, because it modifies our motion 36. To have both issues on the table, we should look at 36 at the same time.

Ms. Gigantes: I would be happy to do that if we could find it.

The Acting Chairman: In that case, let us get motions 32 to 35 out of the way. Perhaps it would be appropriate to simply move them and pass them. Then we can go to 36, and deal with it in conjunction with the motion just read. Let us start with motion 32, then.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3r) Subsection 2 of the said section 33e is amended by striking out 'regional' in the first, second and fifth lines."

Motion agreed to.

The Acting Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3s) Subsection 3 of the said section 33e is amended by striking out 'regional' in the first line."

Motion agreed to.

The Acting Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3t) Subsection 4 of the said section 33e is amended by striking out 'regional' in the third line."

Motion agreed to.

The Acting Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3u) Subsection 33f(1) of the said act, as enacted by the Revised statutes of Ontario, 1980, chapter 262, section 67, is amended by striking out 'regional' in the first line."

Motion agreed to.

The Acting Chairman: We are now on motion 36.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsections:

"(3v) Section 33f of the said act, as re-enacted by the Revised Statutes

of Ontario, 1980, chapter 262, section 67, is amended by adding thereto the following subsections:

"(1a) The appellant shall file a notice of appeal under subsection 1 with proof of service within 10 days after the day the written reasons for decision of the review board are given and shall perfect the appeal within 14 days after receiving a copy of the record and transcript.

"(1b) The respondent shall file an answer with proof of service within seven days after the appeal is perfected.

"(1c) The court may by order extend the time for an appeal or an answer under subsection 1a or 1b.

"(1d) Where, before a certificate of involuntary admission, a certificate of renewal or an extension of a certificate expires, a party to an appeal applies to the court for an extension of the time for conducting or completing the appeal beyond the time period for the certificate under subsection 14(4), the court may by order extend the effectiveness of the certificate.

"(1e) An extension of a certificate under subsection 1d is effective,

"(a) for the next period of time provided for renewal of the certificate under subsection 14(4) or any shorter period set by the court;

"(b) until the certificate is rescinded; or

"(c) until the party appealing withdraws the appeal,

whichever first occurs.

"(1f) Subject to subsection 14(5), when a patient or a person acting on the patient's behalf withdraws an appeal, a physician may complete and file a renewal of the certificate that was under appeal.

"(1g) A renewal of a certificate under subsection 1f is effective for the next period of time provided for under subsection 14(4).

"(1h) The court shall not grant an extension of the certificate under subsection 1d to a party other than the patient or the person acting on the patient's behalf unless the court is satisfied that there are reasonable and probable grounds to believe that the patient's condition would justify the completion and filing of the certificate of renewal.

6:10 p.m.

"(3w) Subsection 2 of the said section 33f is repealed and the following substituted therefor:

"(2) Where a party appeals from a decision or an order of a review board, the review board shall forthwith file in the district court the transcript and record of the proceedings in which its decision was made and the record of the proceedings shall constitute the record in the appeal.

"(3x) The said section 33f is amended by adding thereto the following subsection:

"(2a) The court shall fix a date for the hearing of an appeal at the earliest date that is compatible with a just disposition of the appeal."

Hon. Mr. Scott: Could I request that motion 36a be done at the same time? It is a government amendment of that amendment. It is the one in the funny type.

The Acting Chairman: Ms. Hart moves that section 33f of the act, as set out in the government motion adding subsection 31(3v) to the bill, be amended by adding the following subsection:

"(1ca) Where an appeal is taken against a decision by a review board to discontinue a certificate of involuntary admission, a certificate of renewal or an extension of a certificate, the certificate shall continue in effect for a period of three clear days following the decision of the review board."

Ms. Gigantes's motions 37, 38 and 39 deal with the same subject. I suggest that rather than reading them as before, we deal with the government motion. If the subamendment carries, Ms. Gigantes might consider withdrawing.

Is there discussion on motion 36?

Ms. Gigantes: Could we have an explanation of subsection 1d and of the intent of the new amendment, subsection 1ca?

Mr. Sharpe: Subsection 1d is to be read with subsection 1h, where the hospital or physician is the party that is appealing. The 1ca provision has been added as a bridge, where the hospital is conducting the appeal.

To simplify this, the intent of this government motion is to curtail severely the time frame for appeal to court. One difficulty that all those involved in the system are aware of is the great amount of time it often takes to get to court. The current interpretation being given section 32 of the act is that where there is an appeal taken, there is an indefinite extension of the old certificate. We are trying here to remedy that in part by cutting down the time frames. At the very end of the amendment in subsection 31(3x) of the bill, we talk in terms of the court fixing a date for the hearing at the earliest date compatible with the just disposition of the appeal.

We could not quite give it the same priority as habeas corpus, but the intent is to demonstrate to the court that since the liberty of an individual is involved, these appeals are to be expedited wherever possible.

Ms. Gigantes: In subsection 1d, we are saying that if a review board decides that I as a patient do not need to be held on an involuntary certificate and a doctor or an institution appeals that, the certificate can be extended by the court.

Mr. Sharpe: Yes, on the grounds set out in subsection 1h. The patient can ask for an extension, which will be granted automatically under subsection 1d. In other words, the board has said essentially, "free the patient." The hospital is now appealing that finding and the physician is asking for an extension of the certificate so that the appeal can be dealt with on the certificate that was the subject matter of the board's decision. The criteria in subsection 1h must be satisfied.

This is where, as in our discussion before, the conditions for the new certificate would be brought in without actually bringing in the new

certificate. In subsection lh, we say the court must be satisfied there are reasonable grounds to believe the patient's condition would justify completing a renewal certificate. In other words, but for the appeal, there would be a basis for renewing the status of the patient and keeping the patient there involuntarily in any event. It is only if the court is satisfied that those criteria would be there in any event to allow the certificate to be extended until the appeal is dealt with. If it is not satisfied it cannot extend the certificate and the patient is free. The doctor's appeal is then cut off.

Ms. Gigantes: An extension of the certificate is possible in this situation, on appeal by the doctor, where it was not possible in the previous amendment I brought forward which asks that an extension of the original certificate could be appealed.

Mr. Sharpe: Yes. under your amendment the notion would be that the board has made a decision to free the patient.

Ms. Gigantes: No. That is the situation here. The situation I was talking about was where the board decided the patient should be held involuntarily and the patient wished to apply to court but the certificate ran out before the court hearing. The patient's only choice is to say, "renew my certificate and I will go to court", or "I am going to drop the matter and be thankful for my liberty."

Mr. Sharpe: That is correct.

Ms. Gigantes: However, it does not work that way with doctors who disagree.

Hon. Mr. Scott: I am not that cynical.

Ms. Gigantes: It is true.

Hon. Mr. Scott: If you try to understand the regime being developed you may not like it, but you cannot pass off your dissatisfaction with it on that ground. The reality is that, in the one case with which we are now dealing where the hospital or doctor decides to appeal, the doctor cannot appeal unless the court determines that the appeal has a likelihood of success.

Ms. Gigantes: The doctor could still appeal, could he not? He might not have the patient in custody without court hearing.

Hon. Mr. Scott: No. His appeal would be moot and the court would refuse to hear it. If the patient won at the board, the doctor wants to appeal and the patient is out before the appeal comes on, the doctor's appeal will not be heard. The first thing the court will say is, "This is entirely academic, we will not hear it". There is a restriction on the doctor's appeal, subsection lh. Before the doctor's appeal can proceed he must satisfy the court that there are reasonable and probable grounds to believe the patient's condition would justify the completion and filing of a certificate of renewal.

Ms. Gigantes: That would not stop the doctor from determining the patient had to be admitted on a form 1.

Hon. Mr. Scott: That would be beginning all over again.

Ms. Gigantes: Yes. However, that is possible. All it says is that,

if you are going to continue the certificate, the court has to agree. If you are going to launch a whole new process---

Hon. Mr. Scott: There may be legitimate criteria for that. If there are not, habeas corpus is the fastest remedy.

Ms. Gigantes: Can I ask then about subsection 31(3v) which gives us subsection 1ca?

Mr. Sharpe: Okay. Subsection 1ca would apply--Let us look at the process where the patient has succeeded before the review board. The doctor wishes to appeal that decision. In order to have an opportunity under 1h to explain to the court the basis for wanting to continue with the patient and bring the appeal, there is a provision in section 25 of the Statutory Powers Procedure Act that where an appeal is launched it effects a stay on the order of the tribunal. In this case, the effect of the stay arguably could be to retain the effectiveness of the certificate and not give effect to the order of the board.

6:20 p.m.

Ms. Gigantes: It is not "arguably." That is what it is there for, is it not? That is the purpose of it.

Hon. Mr. Scott: That is why subsection 33f(1ca) is there. Subsection (1ca) has cut down the right of the Statutory Powers Procedure Act potentially to keep the patient in hospital.

Mr. Sharpe: That is right. It gives only three clear days for the doctor to get before a judge to make the case.

Hon. Mr. Scott: In other words, when you read the whole thing together, the doctor is told, "If you want to appeal, you have to meet the criteria of subsection 33f(1h) or your appeal is as dead as a doornail; and you have only three days in which to do that."

Ms. Gigantes: Good.

The Acting Chairman: Is there any further discussion? Are we ready for the question on motion 36?

Ms. Gigantes: May I ask one further question? How long is the total time possible under this new section? I could not figure it out. We have 24 days under subsection 33f(1a); we have up to seven days under 33f(1b); we have a potential extension under subsection 33f(1c), and subsection 33f(1d) gives a further extension of the certificate, though not of the time involved. What might we be dealing with there under subsections 33f(1a), (1b) and (1c)?

Mr. Sharpe: The extension in subsection 33f(1e) would be only for the next period that a certificate could normally be renewed, so that it would depend on what the timing would be on the next certificate where you were in the sequence. It could be a month, two months or three months. That would be right in the context of getting on with the appeals as quickly as possible, the expediting of it that is set out here.

Ms. Gigantes: There are two different matters here. One is the length of time of the certificate and how long it runs; the other is how long it takes to get to the appeal. I am asking the second.

Mr. Sharpe: How long to get to the appeal.

Ms. Gigantes: Yes.

Mr. Sharpe: We are giving the parties in subsection 33f(1a) and so on certain time frames that were felt to be reasonable to get together their statements, their evidence and things that are normally required to be done to get on with appeals and to file them with the courts.

Ms. Gigantes: Am I right?

Mr. Sharpe: These are outside periods that are set out here. It is 24 hours and then seven days. Yes, you are right.

Ms. Gigantes: And there can be a further extension.

Mr. Sharpe: That is correct.

Ms. Gigantes: So we are talking about a potential for 31 days or more.

Mr. Sharpe: That is right.

Hon. Mr. Scott: Unless your doctor appeals. If the doctor appeals, you have three days unless the court makes an order under subsection 33f(1h). Thus, the doctor has only three days to get moving, and only when the court intervenes under subsection 33f(1h).

Ms. Gigantes: Under subsection 33f(1h) all a doctor has to do is to present reasonable and probable grounds that the patient's condition will justify the completion and filing of the certificate of renewal. That is a much less onerous test than he may be asked to go through in the appeal. It is a pretty loose test, in fact. I cannot imagine a court denying a doctor's--

Hon. Mr. Scott: I do not accept that it is a minor test. What the doctor has to show, in layman's terms, if I may put it this way, if he wants to appeal--and he has to show this within three days--is that there are reasonable and probable grounds to keep the patient in there. If he cannot show that, then the appeal is finished, washed up, gone.

Ms. Gigantes: I would like to see a court decide that a doctor does not satisfy subsection 33f(1h) if he is appealing.

Hon. Mr. Scott: If you pass this motion, that is what you will see.

Ms. Gigantes: The first time you see one, you let us know.

The Acting Chairman: Are we ready for the motion?

I would ask us, then, to vote on motion 36a, the subsection 33f(1ca) motion, because it is an extension of motion 36.

Motion agreed to.

The Acting Chairman: Would Ms. Gigantes then consider withdrawing motions 37, 38 and 39, as I believe they deal with the subject matter of 36?

Ms. Gigantes: I had a new motion that replaces motion 39 in part. I do not know whether it still applies, given the amendments we have passed so far, and I would like some guidance on this.

In my motion it says at the bottom, "Replaces motion number 39 in part." It is in the new package and it is an addition to section 33f. It says that if the court overthrows the decision of the review board that the patient should be released, then the court cannot order the patient back to the review board or confirm the certificate, but it asks for a new assessment.

Hon. Mr. Scott: I have difficulty with this. If the patient won before the board and lost before the court, I take it the result is that the board was wrong.

Ms. Gigantes: That is the court decision.

Hon. Mr. Scott: Yes. The doctor was correct. The situation would be exactly the same as if the review board had made the other decision.

Ms. Gigantes: No. Given the amount of time in getting to court, the patient's situation may be entirely different now. If we are talking about 31 or more days to get to court for an appeal, the patient may be in an entirely different mental situation. This amendment says not to assume that the patient is in the same condition but that the court should order another assessment.

Hon. Mr. Scott: I think I understand what is at stake here. I have grave reservations about allowing the court to direct an assessment. I should not say I lack confidence in the court. It is a matter that judges should not, by and large, be doing.

Ms. Gigantes: Ordering an assessment as opposed to saying that the patient shall go back to an involuntary status many days and perhaps months after the matter that was being appealed?

Hon. Mr. Scott: You will presumably have a new order by then, anyway. The Charter of Rights notwithstanding, I have some grave reservations about allowing courts essentially to make this type of order. We all think courts are wonderful and they are certainly very well intentioned, but if a court starts directing assessments--

Ms. Gigantes: What do you mean "directing"? It asks for an assessment.

Hon. Mr. Scott: It may make an order for assessment. There will be an assessment. Then what happens?

Ms. Gigantes: Yes. Under the current amendment the court might say, "This patient should be an involuntary patient based on a matter that is under appeal," a matter and a situation that may be weeks old.

Hon. Mr. Scott: Let us assume the court ordered an assessment and the assessment directed that the patient be held. Then what happens?

Ms. Gigantes: It is all due process under your legislation.

Hon. Mr. Scott: I will let Mr. Sharpe handle it.

... - Mr. Sharpe: My understanding of where this fits in is that if your motion carried, indicating that the order of the board freeing the patient is to be sustained pending the appeal by the doctor, then at the end of the process the patient is now at liberty essentially, or in the community, because that is the effect of the board's order. You are waiting for the appeal. It is two months later when the court has heard the appeal and decides that the order of the board should be reversed.

Ms. Gigantes: Yes.

Mr. Sharpe: The patient is living in the community. It would be unjust now simply to say that the effect of the court's reversal is just holus-bolus, without an assessment, to pick the patient up out of the community and automatically send him back into hospital as if he had stayed there.

Ms. Gigantes: That is my point exactly.

Mr. Sharpe: Now, that motion fell. This really does not fit within the government motion context, because under the government--

Ms. Gigantes: Because the patient is already being held.

Mr. Sharpe: If the patient is already being held in the hospital, he or she will have to have an assessment in any event.

Ms. Gigantes: Yes. That is the guidance I was looking for. This motion is irrelevant.

The Acting Chairman: I take it, then, that we can dispose of motions 37 through 39.

It being 6:30 of the clock, I would entertain a motion for adjournment.

The committee adjourned at 6:30 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
TUESDAY, JUNE 17, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polisinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Mellor, L.

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

From the Ministry of Health:

Sharpe, G., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 17, 1986

The committee met at 5:12 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

The Acting Chairman (Mr. Warner): The committee is called to order. The chair sees a quorum, and we are about to start.

Hon. Mr. Scott: Is the late chairman going to speak on the Mental Health Act? Is that why this has happened?

Mr. Brandt: Yes, he certainly is.

Hon. Mr. Scott: Be prepared for a blockbuster.

The Acting Chairman: We have before the committee the amendment numbered 40 in the right-hand corner. This is a government motion amending section 31 of the bill. Does everyone have it?

We require a government member to move it.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3y) Subsection 4 of the said section 33f is amended by striking out 'regional' in the second line."

Any discussion? Those in favour, please signify. Opposed, if any? It is carried.

Motion agreed to.

Hon. Mr. Scott: That is quite expeditious, Mr. Chairman.

The Acting Chairman: Next is motion 41, a government motion.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3z) Subsection 5 of the said section 33f is amended by striking out 'regional' in the third line."

Is there any discussion on the motion?

Mr. Brandt: I recognize that this is a housekeeping measure, but can the Attorney General (Mr. Scott) tell us why the word "regional" was there in the first instance, why it is now being deleted and what the impact of the change might be?

Hon. Mr. Scott: Under the old act, there were regional boards. We have now moved in some earlier amendments to a province-wide board. We got rid of the regional boards and replaced them with a province-wide board. Therefore, you have to take out the word "regional" wherever it appears or it will refer to a board that no longer exists.

Mr. Brandt: I am satisfied with that answer. That seems to be entirely logical and in keeping with the thrust of the bill. I think we can move on to the next one.

Hon. Mr. Scott: If my recollection is correct, the change--that "regional" should be taken out wherever it appeared--was suggested by you. In the spirit of minority government, I decided, after reflection, to accede to it.

Mr. Brandt: The only reason I raised the point was to see whether you had total recall and whether you would respond back to the time I raised that point. In all humility, I did not want to draw attention to myself. I am quite prepared to move on to 42, if the Attorney General is.

Hon. Mr. Scott: We would that your contributions were always so constructive.

Mr. Brandt: Listen, they will continue to be and we will look forward to some element of co-operation.

The Acting Chairman: Do you think you two can carry this on somewhere else?

Mr. Brandt: Yes, we will.

The Acting Chairman: Is there any further discussion on the motion?

All those in favour please signify. Opposed, if any?

Motion agreed to.

The Acting Chairman: Next is government motion 42.

Miss Hart moves that section 31 of the bill be amended by adding the following subsection:

"(3za). Subsection 6 of the said section 33f is amended by striking out 'regional' in the second line."

Mr. Brandt: Our caucus has considered this very carefully, as well as those of us represented on this committee, and we are prepared to support this amendment.

The Acting Chairman: I thought that was a tough one.

All those in favour please signify. Opposed, if any?

Motion agreed to.

The Acting Chairman: Motion 43 is a government motion.

Miss Hart moves that section 31 of the bill be amended by adding the following subsection:

... - "(3zb). Section 34 of the said act is repealed."

I note that while it says "housekeeping" at the bottom, it is repealing a certain section of the act. Do any members have questions or comments?

Ms. Gigantes: It repeals the old regional review board.

The Acting Chairman: Something more substantive than that.

Hon. Mr. Scott: It repeals the Lieutenant Governor's Advisory Review Board, which is now provided for in the Criminal Code. You recall that Mr. Justice Haines was the chairman of the advisory review board before there was Criminal Code legislation. His board sat by virtue of the Mental Health Act, section 34. The federal government has now entered the sphere. It is incorporated in the Criminal Code; therefore, this section is unnecessary.

The Acting Chairman: Are there further questions or comments?

Those in favour of the motion please signify. Opposed, if any?

Motion agreed to.

The Acting Chairman: The next item is government motion 44.

Miss Hart moves that subsection 31(4) of the bill be struck out and the following substituted therefor:

"(4). Subsection 35(2) of the said act is amended by striking out 'majority' in the third line and inserting in lieu thereof '16 years' and by striking out 'regional' in the sixth line."

Are there questions or comments? Any discussion on the motion?

Those in favour please signify. Opposed, if any?

Motion agreed to.

The Acting Chairman: You probably suspect the next one is 45. It is not. It is numbered 46 in the right-hand corner and is a government motion.

Miss Hart moves that subsection 35(2a) of the act, as set out in subsection 31(5) of the bill, be struck out and the following substituted therefor:

"(2a). An involuntary patient determined to be not mentally competent for the purpose of this section may apply in the prescribed form to the review board to inquire into whether the patient is not mentally competent."

Miss Hart further moves that subsection 35(2c) of the act, as set out in subsection 31(5) of the bill, be amended by striking out "31, 32," in the first line.

Are there any questions or comments?

Ms. Gigantes: I need a little help to understand this one.

Hon. Mr. Scott: I can answer the question. I see the difficulty.

The Acting Chairman: Would it be helpful to members if the Attorney General offered some explanation as a starting point?

5:20 p.m.

Hon. Mr. Scott: The next items we will be voting on are subsections 35(2a), (2b) and (2c), which appear in the photocopy. Motion 46 is a replacement of the subsection 2a currently before the committee with a legislatively tightened-up version.

If you approve this amendment--and you come to subsection 31(5) of the bill, which opens, "Section 35 of the said act is amended by adding thereto the following subsections"--you will have a new subsection 2a and the old 2b and 2c.

The Acting Chairman: I believe there is, by contrast, an amendment placed by Ms. Gigantes to--

Ms. Gigantes: Subsection 35(2).

The Acting Chairman: --subsection 35(2). At the bottom--

Ms. Gigantes: It seems to me it should come first.

The Acting Chairman: --it says, "Replaces 47 in part."

Ms. Gigantes: Yes. We should be dealing with my amendment first, as it amends subsection 35(2). The government amendment is to subsection 35(2a).

Hon. Mr. Scott: I do not have any difficulty with the order. We simply moved this now so that the government amendment would be, for discussion purposes, in a fit state to be debated. I do not think it makes a difference whether you debate your motion first or second.

Ms. Gigantes: I do not think one will affect the other, if I understand the government motion correctly.

Hon. Mr. Scott: That may be, but this motion is simply to clarify our amendment.

Ms. Gigantes: I understand.

Hon. Mr. Scott: The issue of which comes first is a matter of indifference.

The Acting Chairman: We have done this before. If it is agreeable to you, Ms. Gigantes can place her amendment. We can have the two of them on the floor and discuss their merits.

Hon. Mr. Scott: Why do you not pass our amendment?

Ms. Gigantes: My amendment comes first. There is nothing inconsistent about the two amendments. There is no reason to treat one as a substitute for the other.

The Acting Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Subsection 35(2) of the said act is repealed and the following substituted therefor:

"(2) Psychiatric treatment shall not be given to a patient without the consent of the patient or, where the patient has not reached the age of 16 years or is not mentally competent, the consent of the patient's nearest relative.

"(2a) If the consent of the patient's nearest relative cannot be obtained, consent to treatment may be given by an order of the review board made on the application of the officer in charge."

Mr. Polsinelli: Just as a matter of clarification, does that replace your motion 47 in its entirety?

Ms. Gigantes: No, in part.

Mr. Polsinelli: Just the subsection 2 and 2a portions?

Ms. Gigantes: What used to be motion 47, subsections 2d and 2e.

If we leave motion 47 aside and deal with this motion, I would ask you to look at subsection 35(2) of the Mental Health Act, which says:

"Psychiatric treatment shall not be given to an involuntary patient without the consent of the patient or, where the patient has not reached the age of majority or is not mentally competent, the consent of the nearest relative of the patient except"--and this is the part we changed substantially in my amendment--"under the authority of an order of a regional review board made on the application of the officer in charge."

The existing legislation is that an involuntary competent patient can be treated as a result of an order by the regional review board, whether or not that competent patient, and/or the proxy and substitute consent giver, has agreed.

What my amendment would do is say very clearly that for a competent patient and for an incompetent patient the mechanisms for giving consent to treatment would be laid out. For a competent patient it would be the patient; for an incompetent patient it would be the person designated under the legislation; for the person under 16 years it would be person designated under the legislation. It would only be, in the case where there was no such person available, in the case of an incompetent patient, that the review board could order treatment.

It would be a limitation on the legislation as we now have it. It seems to me this is probably one of the critical items that we need to discuss when we are talking about equality rights and the changes that should be made to the Ontario Mental Health Act with respect to equality rights.

The government had tabled before it many months ago a report of the Electro-convulsive Therapy Review Committee, made up of a great many medical practitioners, among other people. That review committee, while it was called upon to look particularly at the question of treatment that was electroconvulsive, also looked at the question of treatment that was instead of electroconvulsive treatment for competent patients.

Let me read one section of the report: "While some of the discussion

relating to consent to treatment may be applicable to treatment in the general sense, the committee has directed its consideration to electroconvulsive therapy in particular. However, in some matters, there is no logical reason for making different positions for ECT than for other forms of treatment in a psychiatric facility and, in those matters, the committee has made recommendations which have broader application."

They do that. That was from page 56. On page 72 it states:

"The committee firmly believes that the definition of competency to make treatment decisions must be clarified and expanded, that there must be established a process for the determination of competency, in a judicial or quasi-judicial manner, and that unless an individual is determined by this process to be incompetent to make treatment decisions, such individual should have the absolute right to consent to or refuse treatment and this decision should not be subject to review.

"The committee recommends that the Mental Health Act be amended accordingly."

Again, on page 73 it says:

"Competency determinations for this purpose"--this is for treatment purposes--"have an enormous impact upon the life, liberty and security of the individual. There must exist the right to appeal. Under the current scheme of the Ontario Mental Health Act, physician-made competence determinations for the purpose of consent to treatment are not subject to review or appeal."

That we will change.

The proposed amendments to Bill 7, if passed, will rectify this omission for involuntary patients.

Essentially, what my amendment tries to do, in addition to the changes that are proposed in Bill 7, is to make sure that we establish in the Mental Health Act that consent is required from a competent patient if treatment is to be undertaken, and to lay out the very narrow grounds in which a noncompetent patient might have treatment ordered by a review board as opposed to that person giving a proxy consent.

5:30 p.m.

Mr. Sharpe: During the public hearings presented by the Ontario Medical Association, I believe the psychiatrists suggested there is a great dilemma posed for hospitals where they are required to hold a patient who has been committed, yet they cannot provide treatment because the patient is competent and refuses to consent. In their view, that would put them in the position of being jailers rather than running very expensive active treatment hospitals.

Apart from anything else, doctors feel a tremendous dilemma in having patients, presumably under their care, whom they are unable to treat. Their concern is that if any other patient does not want to accept the proposed treatment, then that patient is free to leave the hospital. However, for an involuntary patient who has been committed to the hospital and who continues to meet the grounds of certification, there is not that option. Without the treatment necessary to make him better so he can become decertified and then be free to leave, the patient will be in indefinite confinement in a hospital. That is the position psychiatrists put forward most strenuously.

An analogy has been drawn in other areas. For example, the public health area provides mechanisms to authorize not only detention but also treatment of people with contagious diseases. It is true that in those circumstances, the treatment is intended to prevent the spread of an infectious disease. However, a number of people who are committed under the Mental Health Act are there because they represent a danger to others as a result of their illness. For this reason and others, psychiatrists feel it is very important to have a treatment tool. The one in the Mental Health Act is seen by some as a compromise.

A number of provinces still have a provision today that Ontario had many years ago, that simple committal means the hospital can treat with whatever treatment it sees fit. In 1978, the Legislature imposed a provision that has all kinds of restrictions. Applications have to be made to the review board. Two physicians in a facility and a psychiatrist who is not on the staff must certify certain criteria are met; these are reviewed by the board. The board's decision is subject to appeal to a court.

With all these safeguards and with the exclusion of psychosurgery and all other forms of medical treatment that are not psychiatric, the Legislature felt this would represent an adequate balance. It provides the tools in the physicians' hands to treat those who can be helped in a way that is provable to an independent tribunal in a fashion that allows patients to leave hospital sooner. That is why the mechanism is there. The medical profession would be very concerned about the implications of removing that.

Ms. Gigantes: A person who is a competent patient, but who nevertheless may be an involuntary patient, should be allowed to decide the treatment he is given. Unless he is incompetent, nobody should be forcing treatment on him. The kinds of treatment we have in psychiatric institutions are major treatment. None of us would happily see ourselves in situations where we are competent, even though we are involuntary patients, and subjected to all kinds of treatment short of psychosurgery.

This is a very basic issue. It has been looked at. We have heard the submissions Mr. Sharpe refers to. The issue has been looked at by people on the Electro-convulsive Therapy Review Committee, including Dr. John Deck, a doctor and associate professor of neuropathology at the University of Toronto; Dr. Paul Hoaken, professor of psychiatry at Queen's University, Kingston; Dr. E. R. Michel, assistant professor of anaesthesia, University of Toronto; Dr. Brian Shaw, associate professor of psychiatry, University of Toronto; Mary Beth Valentine, RN, executive director of the Canadian Mental Health Association; Dorothy Wardle, RN, from Kingston; and Dr. Emil Zamora, associate clinical professor, department of psychiatry, McMaster University.

There is obviously not unanimity in the psychiatric community and the treating professions on this issue, and the body that was put together to consider the issue seriously has told us that it is a grave matter of the human rights of the person and that the competent patient should not be forced through treatment. While there may be cases psychiatrists can raise that cause them concern, those may be temporary concerns.

In fact, I think there are studies that indicate people who refuse treatment, if they are competent, will accept the treatment if they are given time and if its value is made clear. There certainly is a body of evidence from other jurisdictions to indicate that.

For example, a 1980 study in the United States found that "five of 72 episodes constituted a problem, and in each case the problem seemed to be the

result of delusion." I quote the study Drug Refusal: A Study of Psychiatric Inpatients, published in the March 1980 issue of the American Journal of Psychiatry. The authors are Dr. Appelbaum and Dr. Gutheil.

I think we will find psychiatrists who will argue against a change in our practice. The fact is that we have a Charter of Rights. That Charter of Rights has certain notifications, and the way we deal with whether somebody has to be forced to do things in most cases depends on whether he or she is competent. The Electro-convulsive Therapy Review Committee felt so strongly that it spoke on matters outside its immediate mandate, and I think we have to pay heed to that warning and indication that we need to amend our legislation. In Nova Scotia, the Mental Health Act allows the competent patient to accept or refuse psychiatric treatment.

It may be that the nature of psychiatric treatment for some patients will be changed by this amendment, but I think it is time we encouraged that possibility and treated competent patients as if they were somebodies under our Charter of Rights.

Mr. D. R. Cooke: Very briefly, I intend to vote against Ms. Gigantes's motion. I am late today because I am dealing with an 83-year-old mother-in-law who has Alzheimer's disease. A physician, who is working today, incidentally, advises me that if we do not convince her of certain things this month, it may be too late next month. I cannot help but put Ms. Gigantes's arguments into that context, even though it is not dealing with a mental illness. It is not a situation where when she is perfectly competent, and she will be competent next month, she will be making the best decisions for herself. There are many situations like that which we have to deal with.

Mr. Chairman: All those in favour of Ms. Gigantes's amendment?

Opposed?

Motion negatived.

5:40 p.m.

Mr. Chairman: Now we will deal with the motion put forward on behalf of the government by Ms. Hart. It has been read into the record. I was not in the chair at that time, but I believe you did read it into the record. Is there any comment anyone wishes to make on this amendment?

Hon. Mr. Scott: The effect of it is to replace to subsection 35(2a). It simply tightens up the language and was suggested by legislative counsel.

Mr. Chairman: Shall the amendment carry?

Ms. Gigantes: What are we dealing with, Mr. Chairman?

Mr. Warner: Motion 46.

Mr. Chairman: Those in favour? Opposed?

Motion agreed to.

Mr. Chairman: Motion 49 is another housekeeping one from Ms. Hart.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(6) Subsection 35(4) of the said act is amended by striking out 'regional' in the second last line."

Motion agreed to.

Mr. Chairman: Next we have motion 50.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(7) Subsection 35(5) of the said act is repealed and the following substituted therefor:

"(5) Where the review board is satisfied,

"(a) that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or course of treatment for the providing of which authority is sought; and

"(b) that the mental condition of the patient will not or is not likely to improve without the specific psychiatric treatment or course of treatment,

"the board by order may authorize the providing of the psychiatric treatment or course of treatment specified in the application, but the board shall not authorize and no order of the board is or shall be deemed to be authority to perform psychosurgery."

Ms. Gigantes: This amendment is almost exactly the converse of the one I just put. I am going to point out to members of the committee that this allows the review board to overcome the consent of a competent patient and to provide treatment up to and including shock therapy.

I wonder whether everybody has a good sense of just what we are saying here. I find it truly appalling, given the very serious recommendations we have had from a provincial-government-appointed study group on the question of consent to treatment, that we can simply pass this type of statement of what shall be in our law.

Hon. Mr. Scott: Ms. Gigantes may be correct, but this is essentially a housekeeping order in the sense that it is precisely the language of subsection 35(5) with the removal of the words that open that present section, "Where the attending physician applies." The purpose of it is part of a scheme to make the procedure of the board apply to the variety of treatment orders that can be made under the act.

While I understand Ms. Gigantes's objection to it for the reason she gave on the last motion which was defeated, that motion having been defeated, it seems to me this motion becomes a housekeeping one.

Ms. Gigantes: You are correct. As long as we are housekeeping, we can reconsider. It is possible for this committee to defeat this motion and go back and say, "We want to think about this more."

Mr. Warner: Maybe the government can provide some explanation on why it has decided to reject the advice from the review committee, which I believe was set up through the government. Is there some logical, reasonable reason for rejecting its findings?

Hon. Mr. Scott: The government has not rejected that, which I take it would be an issue to be considered as Ms. Gigantes presented it on the previous motion. That is being considered. We do not support that at the present time. That is why we indicated on the previous motion that we thought the motion should be rejected as it was.

While Ms. Gigantes is entirely right that the committee is always open to reconsider any section that has been passed, on consent or by vote, if you agree the decision previously taken on her motion was the right one, then this is a piece of necessary housekeeping. If you want to reject this housekeeping motion, you would then want to reconsider the previous motion.

Mr. Warner: I want to make sure I have the logic straight on this. The government is not rejecting the report from the Electro-convulsive Therapy Review Committee. It is simply not accepting the recommendation from the committee that the Mental Health act be amended accordingly on the question of competency and decision-making by the patient with respect to treatment.

I have trouble with the logic. The government rejects the recommendation but does not reject the report.

Hon. Mr. Scott: No, that is not correct. The report is a valued and important document. The ministry sent the report to a variety of experts, community groups and others for their views. It is anticipated that those views will be received by a deadline fixed in September. When we have them, we will determine whether the report should be acted on. Without that consultation process, it would be premature to act on it now, but the report has not been rejected.

Mr. Warner: It is a strange procedure, in my opinion. It sounds as though the committee went out and came back with a report. Not being entirely thrilled with the progressive move of the committee, which we have all been reminded reflects the medical community and others, we decide to study it again and try to come up with something we like. We do not like the considered opinion of the people who served on that committee. I am really surprised.

Hon. Mr. Scott: That is not the case. Mr. Clark may have had a committee to assist him. Charles Clark is a lawyer in Windsor who was asked by the previous government to make a study of this question and prepare a report, which he did. We value his report. It is no doubt an excellent piece of work and represents his views on an important and difficult matter. Once a report like that has been received, it is our policy to circulate it among the community of professional and lay people who will be affected if the recommendation is carried forward.

I regard that consultation as important. We do not act simply on the word of Mr. Clark or any other commissioner. We act on his recommendation after we have run it by the groups that will be affected by it to see if there is a negative or positive feature they want to bring to our attention before it becomes government policy. That is not odd; that is the way we like to do things.

Mr. Warner: Perhaps we could describe it as walking it by the groups rather than running it, since this was received prior to Christmas, if I am not mistaken.

Ms. Gigantes: December 1985.

Mr. Warner: December 1985. I presume it was farmed out in January to various interested groups. We are now into June, and we do not have any response from the folk who received it.

Hon. Mr. Scott: It is a little cynical to say you are walking it by. This is an important, difficult and highly complex matter.

Mr. Warner: Absolutely.

5:50 p.m.

Hon. Mr. Scott: A change in the law is proposed. It is not simply a change in where you file a document or how you get into the courthouse. It is a change in the law that comes as close as we can to one's human nature and equality rights. That is enormously important. We would feel insecure to act on a single commissioner's report without full opportunity for the public which will be affected to tell us the downsides, if any. It is all very well to say that we could pass it now, they can tell us later and we can repeal the bill. It is better to do it the other way. It is our policy to try to consult before legislation is effective not afterwards.

Mr. Warner: The groups to whom you have sent it have had it for five months.

Hon. Mr. Scott: I do not know when it went to them. It was in either February or March.

Mr. Warner: When would you anticipate having a response back?

Hon. Mr. Scott: We anticipate the responses will all be back in September.

Mr. Warner: What happens at that stage?

Hon. Mr. Scott: The ministry evaluates the responses and the government, no doubt on the recommendation of the minister, decides what it will propose.

Mr. Warner: Simultaneous with this, you are doing an examination of the Mental Health Act. Is that correct?

Hon. Mr. Scott: It is not simultaneous, but we are doing one.

Mr. Warner: Based on what you hear back from the folks and when you have reviewed it, are you telling us that you may be prepared to entertain changes to the Mental Health Act?

Hon. Mr. Scott: When that process is complete, the government will have to decide its position with respect to the Clark recommendation. In the next session, I presume, a question of the minister would be appropriate such as: "What is the position? The consultation is over." The position will be either that the Clark recommendation will be adopted, that it will be rejected, or that some other method of dealing with it will be advanced.

Mr. Warner: I get it. It is like equal pay.

Hon. Mr. Scott: I am not opposed to consultation. I do not regard consultation as an abridgement of our duties. I regard it as a substantial

opportunity. It is not always fast. I sat outside for a long time and got the bills after they were passed, by and large, as a fait accompli. The government announced the policy, it had a majority and that was it. A bill went through and if you did not like it you could come up later and ask for a change. I do not believe in doing it that way.

Mr. Chairman: I think you may have touched on some sensitive nerve.

Mr. O'Connor: Is the minister not doing exactly as he decries was the procedure of the previous government? I tend to agree with the government amendment in its substance, but are we not getting ourselves into a severe difficulty with regard to the procedure. Again, is the minister not doing exactly what he alleges the previous government did?

He says there is a parallel study or amending process going on with the Mental Health Act. He says a man named Clark has made serious recommendations which should be given every consideration. At the same time, is he not sending out signals to all those groups out there to whom he has sent copies of this report asking their reaction saying, "We are going to reject the Clark amendments because we are passing these amendments right now"? Would it not be better to simply do nothing at this point, leave the slate clean, not send any signals on one side or the other of this issue so these groups will feel there is no perceived bias in the government on which way it ultimately wishes to go? You say we want to hear from these groups before we make any changes. On the other hand, we are making the changes, inviting them to come back later and say: "We do not like those changes. Change them back again to some other form."

Hon. Mr. Scott: I think Mr. O'Connor is correct. Perhaps there is a misunderstanding.

Mr. O'Connor: I am correct?

Hon. Mr. Scott: This amendment does not make any change. It leaves matters the way it was. That is why it is essentially a housekeeping amendment. Just to clear the record, if this is the way the previous government conducted itself in this respect, I do not think it was all bad. It may have done this sort of thing correctly. That is as far as I can go.

Mr. O'Connor: I do not understand that you can say by amending it we are leaving things the way they are. If we want to leave the things the way they are and the slate clean, why not withdraw the amendment pending the study that is to be completed in the fall regarding the Mental Health Act?

Hon. Mr. Scott: Yes, but this section you are dealing with makes no change in the existing law. It is necessary to remove the words "where the attending physician applies," because of the changes made previously. There is no change and therefore no signal.

Mr. O'Connor: I did not understand that is all it did. The Attorney General is assuring us that there is no change. I believe we are ad idem on that point.

Mr. Chairman: Is there anything further?

Ms. Gigantes: Briefly, the Attorney General is quite correct in saying that this amendment does nothing to alter the decision we made earlier. My position has been that we look at this amendment as part of the decision we

made earlier and say that we want to review the decision we made earlier. The Attorney General has referred several times to the Clark committee and Mr. Clark, and the fact that he is a barrister and solicitor from Windsor, and so on.

This committee was set up after many years of consultation by the government and a heck of a lot of work, study and thought in submissions to the government calling for limitations on the power of bodies, facilities, the review board and physicians to treat the competent person against that person's will.

I find it hard to understand how members of this committee can accept that this is the view of one person; it is not. The electro-convulsive therapy review committee was set up after years of consultation with the government and in response to great efforts by many groups and many individuals to get the government to change the legislation and to provide modern-day legislation in this area. They are not the views of Mr. Clark; they are the views of the committee. That committee had psychiatrists on it. They disagree with the psychiatrists who came before us and who are still lobbying against the change.

We know who does not want this kind of change. It is the "treaters." It is not the "treatees." It is not the families of the "treatees." It is the "treaters" who wish to have unabridged mechanisms for providing treatment where a competent patient is unwilling. Why should a competent patient be subjected to something like a drug treatment regime or an electroshock regime against his will? Do you think that really cures people? Do you think that really provides for the health of the public in Ontario? I am not only not convinced, I am certain that it does not, and I do not stand alone on that. I stand with a group of people who worked very hard together. They achieved consensus on this matter and were quite strong in their affirmation that the Mental Health Act had to be changed to provide for the life, liberty and security of competent psychiatric patients.

6 p.m.

I ask the committee either to delay voting on this one, giving thought to the previous amendment which failed, or to overturn this one and go back to the one we just voted against and reconsider it. It will look very foolish to people who are expert in this area for us to go ahead and say that competent patients can be treated against their will on an order of the review board.

Mr. Chairman: We have had considerable discussion on this matter. I will now call for those who are in agreement with the amendment as placed by Ms. Hart.

All those in favour? Opposed?

Motion agreed to.

Mr. Warner: In case members have forgotten, a motion to reconsider by someone who voted on the opposite side of the question is always in order--if someone had sober second thoughts.

Mr. Chairman: There were ample opportunities.

Mr. Warner: So someone who voted against my colleague's motion can now move to reconsider.

Ms. Gigantes: You do not have to do it today.

Mr. Chairman: I am glad you pointed that out. Anyone who is so motivated or inclined can certainly take the initiative, after having had it explained in some detail by Mr. Warner.

Mr. Warner: Just trying to be helpful.

Mr. Chairman: That kind of advice is always welcome. I deeply appreciate it.

We can now go on to motion 51.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(8) Subsection 35(6) of the said act is amended by striking out 'regional' in the fourth line."

Shall that motion carry?

Motion agreed to.

Mr. Chairman: Ms. Gigantes's motion 52 has not been dealt with as yet. I guess we have to defeat it.

Ms. Gigantes: We do not have to deal with it.

Mr. Chairman: It is a nonstarter. We can move to 53.

Ms. Hart moves that subsection 35(7) of the Mental Health Act, as set out in subsection 31(5) of the bill, be struck out and the following substituted therefor:

"(7) Where a person who gives a consent under this section claims to be,

"(a) married to the patient; or

"(b) a person of the opposite sex with whom the patient is living outside marriage in a conjugal relationship, if the person and the patient

"(i) have cohabited for at least one year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986,

"but is not so related, the consent is valid for the purposes of this act if the person who acted upon it had no reason to believe that the person who gave it was not so related."

Ms. Gigantes: Essentially this means that if a doctor accepts the word of someone that he or she is one of the people described in this motion, and gives consent to treatment, the doctor is protected. Is that correct?

Hon. Mr. Scott: Yes.

... - Ms. Gigantes: However, I note that it does not protect the estranged spouse. It does not protect the doctor against the person who claims to be the estranged spouse but is not, as we do allow the estranged spouse to give consent to treatment. The doctor is therefore not fully protected.

Mr. Polsinelli: Was that a question?

Mr. Chairman: I am waiting for a response.

Hon. Mr. Scott: The answer is yes.

Mr. Polsinelli: I also have a question. I am curious why the motion reads "no reason to believe" in the second last line rather than using the term "notice."

Hon. Mr. Scott: The expression "who acted upon it had no reason to believe" is just a simpler, more straightforward way of describing notice.

As you will recall, when you use the word "notice," you then have a debate about whether it is actual or constructive notice. We have been through that in connection with another bill. This language has the virtue of simplicity. I believe it says what we mean. It is also the same as motion 15a, which you have already passed.

Mr. Polsinelli: I missed it, then. This is just personal curiosity, stemming principally from a bit of an understanding of what notice means. Even though this may appear to be a bit clearer, I am sure you personally can find 50 different interpretations of what this means in 10 fact situations.

Hon. Mr. Scott: I do not think I can. If the language said that the person who acted upon it had noticed that the person who gave it was not so related, that would be ambiguous. There would be a big discussion about whether the notice was to be actual notice or constructive notice. Then you would have to modify that to make clear whether you meant constructive notice. If you meant constructive notice, you would have to look at the cases about what evidence would be available that would justify it. This says very simply, "had no reason to believe."

Mr. Polsinelli: Is that not very close, though, to a definition of actual notice?

Hon. Mr. Scott: No. You can have actual notice that is deemed by some statute to be actual notice, even though it might normally be constructive. I really believe in using words of one syllable that are commonly used in English, where you can do it, and that have meanings generally recognized by readers.

Mr. Chairman: Shall the amendment to subsection 31(5) carry?

Motion agreed to.

Mr. Chairman: We may have to do some quick housekeeping here for a moment, committee, if you will bear with me.

6:10 p.m.

There is still some confusion on what we have to do on this. If you would turn to page 14 of Bill 7, subsection 31(5), the motion I now require is

one to carry that as now amended. We dealt with subsection 35(7) of the Mental Health Act in the last motion and subsection 2a. We now require subsection 31(5) to be carried, as amended.

Ms. Hart moves that subsection 31(5), as amended, now carry. That cleans up the balance of that section. It is probably just a housekeeping item or a straightening out in case we have not clearly concurred with that part.

We can go to motion 55.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(9) Section 35 of the said act is further amended by adding thereto the following subsection:

"(9) Where a party appeals an order authorizing the providing of a specific psychiatric treatment or specific course of psychiatric treatment to a patient, the treatment or course of treatment shall not be provided pending the outcome of the appeal, unless otherwise ordered by a judge of the court appealed to."

Is there any comment with respect to Ms. Hart's amendment? Shall the amendment carry?

Motion agreed to.

Mr. Chairman: Now we go to motion 56.

Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(21) The said act is amended by adding thereto the following section:

"35a. Any use of restraint on a patient shall be clearly documented in the patient's clinical record by the entry therein of a statement that the patient was restrained, a description of the means of restraint, including in the case of chemical restraint, the chemical employed, the method of administration and the dosage, and a description of the behaviour of the patient which required that the patient be restrained or continue to be restrained."

Ms. Gigantes: Mr. Chairman, may I speak to that?

Hon. Mr. Scott: We accept that.

Ms. Gigantes: Then I will not speak to it.

Mr. Chairman: That will probably get a whole bunch of support quickly.

Ms. Gigantes: I am glad to have your support.

Mr. Chairman: Is there any comment on the amendment by Ms. Gigantes?

Hon. Mr. Scott: Just a minute now. We have two 35as. Are they exactly the same? One says "Replaces motion no. 56" and one does not. They are both in the name of Ms. Gigantes.

Mr. Chairman: The one that says "Replaces motion no. 56" is the appropriate one.

Hon. Mr. Scott: On reflection, the one that was read is simply a cleaner way of drafting the other one.

Ms. Gigantes: The second one, which was not read, was done by legislative counsel.

Mr. Chairman: Is that the one with subsection 2?

Hon. Mr. Scott: If Ms. Gigantes concurs, we prefer the one legislative counsel drafted.

Ms. Gigantes: Make up your mind.

Hon. Mr. Scott: It is the same, except that it breaks out the paragraph.

Ms. Gigantes: Yes, but a second ago you said the opposite, so I was not clear.

Hon. Mr. Scott: I was not sure which one you had read.

Ms. Gigantes: I will reread the motion so we have the correct one on the record.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) The said act is amended by adding thereto the following section:

"35a(1) The use of restraint on a patient shall be clearly documented in the patient's clinical record by the entry of a statement that the patient was restrained, a description of the means of restraint and a description of the behaviour of the patient that required that the patient be restrained or continue to be restrained.

"(2) Where a chemical restraint is used, the entry shall include a statement of the chemical employed, the method of administration and the dosage."

Mr. Warner: This is the one you prefer to the other one?

Hon. Mr. Scott: Yes.

Ms. Gigantes: Have whichever one you want.

Hon. Mr. Scott: It is nice to have a choice.

Mr. O'Connor: Perhaps some medical authority could answer this. In the course of normal record-keeping for medical purposes, is the name of the doctor or the authority, or the insertion of a note in the record, always mentioned in the record? If not, would it be appropriate to add to the list of things that should be recorded the name of the doctor or authority who authorized the restraint that was administered to the patient?

Hon. Mr. Scott: I think the answer is that the Health Disciplines

Act or regulations require either a signature or some identifying symbol for the person who made the entry.

Mr. Chairman: Shall the amendment placed by Ms. Gigantes carry?

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(10) Subsection 43(1) of the said act is amended by striking out 'chairman of the review board having jurisdiction' in the third and fourth lines and inserting in lieu thereof 'review board.'"

Is there any comment? This is also a housekeeping amendment. Shall the amendment carry?

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(10a) Subsection 43(2) of the said act is amended by striking out '31, 32 and 33' in the second and third lines and inserting in lieu thereof '33, 33a, 33b, 33c, 33d, 33e and 33f.'"

Shall the amendment carry?

Motion agreed to.

Ms. Gigantes: There is no notation on this about housekeeping. I have not written my own notes on this. What does it do?

Mr. Sharpe: This is the procedure where a patient who is found incompetent to manage his estate wants to challenge that to the review board. This amendment will provide that patient with access to all the new due process procedures that apply to all other applications to the board.

Mr. Chairman: That was carried, so we can go to motion 58.

Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 62 of the said act is repealed."

Ms. Gigantes: The effect of that would be to make consistent with the Public Hospitals Act the time limitation on illegal action by a patient.

Hon. Mr. Scott: No, that is not the effect of it. I can tell you what I judge the effect of it to be, if that would be helpful.

Ms. Gigantes: Try. Certainly.

Hon. Mr. Scott: The present provision in section 62 applies to things done in pursuance or intended pursuance of the act and has a six-month time limit after the act or omission occurred. If you repeal that, the effect will be to entitle the person to rely on the Public Authorities Protection Act under which the limitation applies to things done in pursuance or intended

pursuance of a statutory or other public duty or authority--and this is key--six months after the cause of action arose.

The effect of that language, "the cause of action arose," as a result of two cases, one in the Court of Appeal and one in the Supreme Court of Canada, the first of which is Consumers Glass, is to extend the limitation period, so there would be no consistency.

Ms. Gigantes: Then I seek some help because I want to amend section 62 to provide a limitation of the same kind as under the Public Hospitals Act.

6:20 p.m.

Hon. Mr. Scott: Under the Public Hospitals Act, the limitation is two years after discharge or end of treatment.

Ms. Gigantes: That would be satisfactory to me.

Could I withdraw the motion and say instead that I move that section 31 of the bill be amended by deleting in the fourth line "six months" and substituting therefor "two years."

Hon. Mr. Scott: I am not sure whether that is going to do it.

Ms. Gigantes: That is not going to do it either because it is not after completion of treatment.

Hon. Mr. Scott: That does not do it because, first, that makes section 62 read "shall be commenced within two years after the act or omission complained of occurred and not afterwards."

Ms. Gigantes: Yes. What I want to say is "two years after the completion of treatment." Is that correct, to be consistent?

Hon. Mr. Scott: If you were going to follow the language of the Public Hospitals Act, you would say, "after discharge." You are getting into a very major difficulty. In the public hospital situation, it is contemplated that a patient will be there for a relatively short period of a week, or two or three.

If you say "after discharge," in these cases you may be dealing with patients who have been there for years and you will be preserving litigation that is years old and exposing people to actions that arose five, seven or nine years ago. The effect of that is enormous in terms of insurance because no doctor or custodian will be free of a cause of action until two years following the discharge of his mentally ill patient. He will have to carry coverage for that, in many cases, for life.

Ms. Gigantes: He now carries coverage for six months after the act or omission complained of?

Hon. Mr. Scott: Six months after the act or omission occurred.

Ms. Gigantes: Occurred.

You will recollect, Mr. Chairman, that when the Ontario Hospital Association was before us, it pointed out this inconsistency and recommended that there should be consistency.

Hon. Mr. Scott: I am not opposed to consistency. I am concerned that if you are going to extend a limitation period which is the result of your amended proposal, it is very dangerous to do that without adequate consultation because we do not know at the moment what that is going to do to insurance. We are very sensitive, as everybody is, about the problems of getting insurance for professionals in difficult matters---

Ms. Gigantes: We know that insurance matters are much more important than equal benefit of the law.

Hon. Mr. Scott: No. It is not a question---

Ms. Gigantes: That is, in effect, what you are saying.

Hon. Mr. Scott: It is not, in effect, what I am saying at all. There is a limitation act in respect of every cause of action that is known to man. They are mostly found in the Limitations Act, and they vary. All I am saying is you can pick a limitation period. There has to be one. You cannot do without one, and everyone recognizes that. You can pick any one you want.

I am simply saying that if you want to pick a limitation period that extends substantially the present limitation period, in fairness, you should have hearings on that to determine what its effect will be. You and I do not know what its effect will be.

Ms. Gigantes: We do know that when the hospital association came before us, it pointed out the inconsistency, which is such that in different parts of the same institution different patients have different limitation periods.

Hon. Mr. Scott: The association made that point, and I understand it. However, the reality is that a public hospital is, by and large, not treating people in the same way. People are in public hospitals for relatively short periods. You may be there for several months, but even that could be relatively unusual. The doctor then knows that two years after the discharge is all the insurance he has to buy. It can be quickly assessed that it means there will be coverage for two years plus an average stay of, say, two months in a hospital. He is quoted on two years plus two months.

Ms. Gigantes: But in a public hospital you have different time limitations for the psychiatric ward as opposed to the general ward.

Hon. Mr. Scott: I am sorry to tell you--it is a matter of regret--there are people who have been under treatment prior to discharge for years and years.

Ms. Gigantes: In a public hospital. I mean in one of our local hospitals which has a psychiatric ward.

Hon. Mr. Scott: Yes. All I am saying is that you can pick any limitation period you want; there has to be one. However, there is a very serious risk that the insurance premium will go through the roof.

Ms. Gigantes: Why would that be?

Hon. Mr. Scott: Because the coverage the insurer is being asked to give is substantially longer than the coverage the insurer now has to give.

Ms. Gigantes: And you think it will give rise to a lot more cases.

Hon. Mr. Scott: It will give rise to a much greater risk of cases, and it is the risk of cases that insurers quote against.

Ms. Gigantes: I think that is an argument for extending the limitation period. We are talking about a very stern limitation on the period in which in an ex-psychiatric patient can take an action.

Hon. Mr. Scott: I do not oppose the principle.

Ms. Gigantes: Considering the gamut of treatment we have provided without the consent of competent patients, I find it extraordinary that once a competent patient is out and objects to what happened to him on good grounds, he is dead in the water as far as our courts are concerned unless he gets his action together in six months.

Hon. Mr. Scott: Everybody must expect that people in this situation will carry insurance. You would be appalled to hear that somebody did not carry insurance, because the recovery would be zilch; that is zero, for the reporter. You would want coverage. It is not wise to pick a limitation period in a wilfully blind state. You have no idea, and neither do I, what this will mean in terms of insurance premiums. If you feel strongly about it, we should find out about that and get the insurance industry here.

Ms. Gigantes: Why do you not talk to the insurance industry, Minister, and come back with a new date?

Mr. Chairman: I have Mr. O'Connor and Mr. Warner. I call the attention of the committee to the time. Perhaps we will be able to wrap up this section. I will leave it up to the committee's discretion as we move along.

Mr. O'Connor: By way of clarification, can I ask the minister if the effect of the Court of Appeal case he cited was to interpret the Public Authorities Protection Act to mean that actions could be commenced six months after the cause of action came to light or came to be known to the plaintiff? Is that correct?

Hon. Mr. Scott: That is the effect of it. The language of the statute is "cause of action arose," and the Consumers Glass case says "arose" means "knew or ought to have known."

Mr. O'Connor: Okay. "Came to light" in layman's terms.

In section 62, which we are dealing with, it speaks about actions commencing within six months of the act occurring and not afterwards. Is there not a fundamental unfairness in that, especially in this area? The treatment complained of might have occurred quite some time ago. The six months may have passed, and the man's action is barred. In the interests of fairness, should we not be going at least to the interpretation of the Court of Appeal in the other statute?

Hon. Mr. Scott: That could be done. All I am saying is--

Mr. O'Connor: I realize your argument, Ms. Gigantes, about changing statutory limitation periods without insurance implications, but--

Hon. Mr. Scott: It is the same to you.

Mr. O'Connor:--there is a fundamental unfairness here. You might be barring a considerable number of actions where people did not even know they had the action until after the six months had gone by.

Hon. Mr. Scott: Section 62 is much tighter; there is no question about that. I accept your point. The issue here, it seems to me, is to what extent you are going to allow actions to be commenced that may be ancient. This is not a problem that generally concerns limitation processes. There are cases where an object is lodged during an operation and is not discovered for five years, but in the general marketplace such an example is very rare.

Here is a situation where there will be many patients, often incompetent, who have been under treatment for years. I am asking the committee where you want the cutoff to be. Is it appropriate that a patient under treatment for 15 years should be allowed to sue a doctor as a result of something that happened 15 years ago?

Mr. O'Connor: Why not, if it did not come to light until 15 years later?

Hon. Mr. Scott: If the answer to that is yes, then something has to be done to alert the insurers and doctors, because their liability coverage is not adequate for that purpose. We are making a fundamental change in the kind of liability insurance they must have right now, or when this act is proclaimed.

Mr. O'Connor: But you have pointed out that the nature of treatment in this area is usually extensive and longer than in physical medicine where one procedure or operation is the incident complained of. Here, as you said, we may go back 15 years. We are effectively barring a considerable number of actions.

I realize your insurance argument, but to support Ms. Gigantes in her premise that civil rights in this area are more important than insurance premiums, maybe we should be doing that.

Hon. Mr. Scott: No. They are barred now. Let us be clear about that. We are making no change. Ms. Gigantes's point, and yours, is that we should make a change. I understand that point.

I draw your attention to the Consumers Glass principle that extends very few of the cases beyond the date of the act or omission. It will almost invariably be the case that, within minutes or days of the act or omission, the potential plaintiff knew or ought to have known sufficient facts.

Mr. O'Connor: That is true in physical medicine, but if you are dealing with an incompetent patient, he may not know what has happened.

Hon. Mr. Scott: That is what I am saying.

Ms. Gigantes: You may be dealing with an incompetent patient who is forced to treatment by a review board.

Hon. Mr. Scott: The point I am making is that the insurance industry was able to live with the Consumers Glass principle because such a small number of cases would take advantage of that principle, probably less than

half of one per cent. With this proposed change, a large number of plaintiffs will want to take advantage of it or will be entitled to take advantage of it. That fundamentally alters the risk.

You are saying that, when this act is passed, doctors must have insurance to cover this new risk. That is fine with me, but we should know what we are asking them to cover and what it will cost. I presume you have to weigh the cost of that against the desirable social benefits Ms. Gigantes has described.

Ms. Gigantes: It is a human right.

Hon. Mr. Scott: No, it is not a human right.

Ms. Gigantes: Yes, it is a human right because we do not provide equal benefits of the justice system to psychiatric patients. Let me make that clear.

Hon. Mr. Scott: I do not accept that.

Mr. Chairman: Members of the committee, I suggest that since Mr. Warner and Mr. Polsinelli requested an opportunity to speak to this amendment, we stand it down and resume on Monday from this point. With your concurrence I will not call for a vote on this item now because we have two other members who have indicated an interest in speaking.

Mr. Warner: It allows the Attorney General an opportunity to reflect.

The committee adjourned at 6:33 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT

MONDAY, JUNE 23, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Mellor, L.

Staff:

Tucker, S., Registrar of Regulations, Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Ewart, J. D., Director, Policy Development Division

Shiple, A. Q., Counsel, Policy Development Division

From the Ministry of Health:

Sharpe, G., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, June 23, 1986

The committee met at 4:07 p.m in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

Mr. Chairman: Members of the committee, I have a couple of questions I want to raise with respect to some housekeeping matters. I would like to get under way as quickly as possible because there are some time constraints that have been brought to my attention by other members of the committee that we should probably share with you.

Mr. D. R. Cooke: This bill does not go on for ever?

Mr. Chairman: It does not. You will be pleased to know there is a point of finale. I cannot predict when that might be, but it is there.

Mr. D. R. Cooke: It will not be in our lifetime.

Mr. Chairman: That may well be the case.

The first matter I would like to advise the committee of is that, because Tuesday of next week is Canada Day, this committee will not be sitting Monday or Tuesday.

I would like the committee to give some consideration to the time in which you would have a preference for sitting during the recess. The House leaders are now in discussion on this. The options are the months of July, August or September. I do not expect an answer now, but if you would like to review what I know are some very difficult schedules, I would be pleased to hear from you with respect to timing so that I can attempt to accommodate the majority.

In that regard, we will obviously be finishing Bill 7. There is some possibility we may do that while the House still sits, but I am beginning to arrive at the conclusion that, with the loss of the two days next week, this may be very difficult.

However, there will be other legislation passed on to this committee. I cannot identify for you yet what that legislation might be, but I will advise the committee as soon as the chairman has been advised by the House leaders. Second, we may have estimates referred to us and that could also be dealt with during the break.

Those are some of the matters coming up.

Finally, if the committee would like to form a steering committee, usually made up of the critics of each party along with the government

representative, on what approaches we might be able to make with reference to any matters referred to our committee over the next period of time--in other words, an ad hoc steering committee--I would be pleased to have such a committee struck that can deal with the chairman on these matters so that I do not have to call the entire committee together. If you agree with that, my suggestion for a steering committee would be: Ms. Gigantes from the New Democratic Party, Mr. Callahan from the government and Mr. O'Connor from the Progressive Conservative Party.

Mr. O'Connor: Do you need a motion on that, Mr. Chairman?

Mr. Chairman: Yes. I think we should strike the committee and then we have it on the record.

Mr. Partington: I will move that.

Mr. Chairman: Mr. Partington moves that Mr. O'Connor, Mr. Callahan and Ms. Gigantes be appointed to a steering committee of this committee for purposes of expediting some of the work we may have to discuss, either during the break or on brief notice.

Motion agreed to.

Mr. Chairman: Are there any other comments on some of the matters I have raised? I do not necessarily expect you to now give me the preferred month--or even longer--you would like to sit.

Mr. O'Connor: Every day of every week.

Mr. Chairman: That may be necessary. It looks like we will be rather busy over the summer period, so it is entirely up to the committee how much we want to sit, within reason.

As you know, we are looking at the possibility of recessing in mid-July. If that is the case, our committee will be able to resume its work immediately thereafter, if we get that direction from the House leaders.

Mr. O'Connor: With respect to today's proceedings, some of the members might know, because I have spoken to them, that there is a social function this afternoon involving our caucus which is some distance removed from the buildings.

Mr. Callahan: Where is it? In Vancouver?

Mr. O'Connor: I am wondering if the committee will show its goodwill towards the members of our party and permit us to adjourn somewhat early this afternoon to enable us to attend that function. I am suggesting five o'clock.

Mr. Callahan: We could not possibly do that.

Mr. O'Connor: It is an accommodation which I believe is afforded to the various parties from time to time when these things arise.

Ms. Gigantes: If I understand our order of business today, we will be dealing with noncontroversial items. I would like to see us get as far with that as we can. I would still like to see this bill passed before the House adjourns.

Mr. Chairman: I think we share that feeling. I would like to get on with it as well. If we can finish this debate on the matter of when we are going to adjourn today rather quickly, then we will be moving towards the objective Ms. Gigantes has so well identified.

Mr. O'Connor: May I also say that I understand, as is obvious, the Attorney General (Mr. Scott) is not able to be here today. Therefore, we are postponing anything of a controversial nature. That has been agreed among the parties.

Ms. Gigantes: Let us go ahead and do it.

Mr. O'Connor: Therefore, perhaps we can get quite a bit done in the next hour to allow us to leave.

Mr. Chairman: Do we have agreement that we will break in approximately an hour, at five o'clock or shortly thereafter?

Mr. Callahan: If you tell us where you are going.

Mr. O'Connor: You are not invited. You want to get there to wire the place.

Mr. Chairman: I shared the information informally and confidentially with Ms. Gigantes in a last-ditch attempt to get her support on this matter. I do not know how well I did.

Mr. D. R. Cooke: I understand that Ms. Gigantes is attending this party.

Mr. Chairman: That is an incorrect conclusion you have arrived at, but it is not the first one and I am sure it will not be the last.

Mr. O'Connor: Do you play first base?

Mr. Chairman: We can get on with the bill.

Mr. Callahan: You are not going to take a vote on that?

Mr. Chairman: I assumed we had all-party concurrence.

Mr. Callahan: I may put a question in Orders and Notices to find out where you were.

Mr. Chairman: We were in the middle of motion 58 at the time we completed the last meeting. It is my understanding that Ms. Gigantes does not want to go to motion 58 now. Could I have some indication from the committee as to where you would like to start?

Ms. Gigantes: Noncontroversial items. What is left?

Mr. Chairman: Motion 59.

Mr. Callahan: What about motion 60?

Mr. Chairman: Motion 59 and motion 60. Let us start with motion 59. I am advised that we can go to motion 63 without great difficulty.

On section 31:

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(11) Clause 65(1)(h) of the said act is amended by striking out 'a' in the second line and inserting in lieu thereof 'the.'"

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(12) Clause 65(1)(i) of the said act is amended by striking out 'review boards and advisory review boards' in the second line and inserting in lieu thereof 'the review board.'"

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(13) Clause 65(1)(j) of the said act is repealed."

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(14) Clause 65(1)(k) of the said act is amended by striking out 'review boards and advisory review boards' in the second and third lines and inserting in lieu thereof 'the review board and the co-ordinator.'"

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(15) Clause 65(1)(l) of the said act is amended by striking out 'review boards and advisory review boards' in the first and second lines and inserting in lieu thereof 'the review board.'"

Motion agreed to.

Mr. Chairman: If the committee would go back to motion 5a, Ms. Gigantes had an amendment on this one, did she not?

Ms. Gigantes: The government has an amendment.

Mr. Chairman: Could we proceed then? The form will be for the government amendment to go first and then we will discuss it. Ms. Gigantes will have an opportunity to place her amendment following that.

Ms. Hart moves that section 31 of the bill be amended by adding the following subsection:

"(1c) The said act is amended by adding the following section:

"Child as informal patient

"8a (1) A child who is 12 years of age or older but less than 16 years of age, who is an informal patient in a psychiatric facility and who has not so applied within the preceding three months may apply in the prescribed form to the review board to inquire into whether the child needs observation, care and treatment in the psychiatric facility.

"Application deemed made

"(2) Upon the completion of six months after the later of the child's admission to the psychiatric facility as an informal patient or the child's last application under subsection 1, the child shall be deemed to have applied to the review board in the prescribed form pursuant to subsection 1.

"Considerations

"(3) In determining whether the child needs observation, care and treatment in the psychiatric facility, the review board shall consider,

"(a) whether the child needs observation, care and treatment of a kind that the psychiatric facility can provide;

"(b) whether the child's needs can be adequately met if the child is not an informal patient in the psychiatric facility;

"(c) whether there is an available alternative to the psychiatric facility in which the child's needs could be more appropriately met; and

"(d) the child's views and wishes, where they can be reasonably ascertained.

"Powers of the board

"(4) The review board by an order in writing may (a) direct that the child be discharged from the psychiatric facility, or (b) confirm that the child may be continued as an informal patient in the psychiatric facility.

"No limitation

"(5) Nothing in this section prevents a physician from completing a certificate of involuntary admission in respect of the child.

"Procedure

"(6) Sections 33, 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection 1."

Mr. Chairman: I know we have discussed this previously, but could we have just a brief overview with respect to the changes in this?

Ms. Gigantes: Could I ask, first, does the government intend moving another motion associated with this one, as part of 5a?

Mr. Ewart: It will be 8b.

Ms. Gigantes: I am quite happy with the other--

Mr. Chairman: I was hoping we could clarify all of that in any comments you may wish to make at this time.

4:20 p.m.

Mr. Sharpe: We have tidied the whole section up. All four of us have thought about this since the representations made by Justice for Children. The amendment would provide children between 12 and 16 years of age with a right to apply to the review board to look into the appropriateness of their "detention" in the facility. I recall a couple of weeks ago a discussion surrounding the question of the extent of the authority of parents and guardians and the children's aid society to sign a person into a facility. That is not a clear authority. It is not regulated under the Mental Health Act, and there has been concern expressed about detaining young persons who do not meet the committal criteria in a facility without any of these so-called due process protections that would be accorded them if they were certified.

This is an attempt to work out the model that the government promised it would try to sort through in the weeks this bill has been discussed in committee. This is the result of our work. Subsection 8a(1) provides children with the ability to apply to the review board to inquire into whether they require observation, care and treatment in the facility. Subsection 8a(2) is an automatic provision for an application deeming to be made, an automatic review. Subsection 8a(3) contains some of the considerations that the tribunal would take into account. This is by no means an all-inclusive list. There may be others, such as continuity of the child's care being interrupted and least restrictive and things of that sort, which would likely be taken into account by the board as well, but these seem to be the primary considerations that we are saying the board must take into consideration.

The powers in subsection 8a(4) provide the board with the ability to direct that the child be discharged or to confirm that the child be continued. Subsection 8a(6) provides the procedural protections before the board that we discussed in this committee a couple of weeks ago and last week, so that those would be available.

The new motion 19, which would follow if this were to pass, is the notification of legal aid provision that was also circulated with this proposed amendment. I will not read this, but it simply extends to the child and to legal aid the notice provision that normally applies now with respect to involuntary patients. When a certificate of involuntary admission or renewal is completed, there must be notification of that fact to the patient and to the area director of legal aid.

If the amendment regarding the child in 8a passes, then it would be proposed that 19 be changed to ensure that the youngsters here have the same rights of notice so that they are aware of their rights to go to the board. An additional amendment, which it is hoped would be moved, would appear as 8b and would say something to the effect that nothing in this act authorizes a psychiatric facility to detain or to restrain an informal patient. That would be a clarification and codification of the common law and would make it absolutely clear to the psychiatric facility and to physicians that they cannot detain or restrain any patient who is there on a voluntary basis and is not being held there against his will.

The proposed amendment by Ms. Gigantes would apply that principle to children. It is proposed here that the same principle should apply to every informal patient and not just to children.

Mr. Callahan: You have indicated that section 3 contains the items that must be looked at, and you said those would not be the only things looked at. Where in the act does it allow them to look at anything else?

Mr. Sharpe: The wording of this is, "In determining whether the child needs observation, care and treatment in the facility, the review board shall consider...." It does not limit its considerations to these four. It just requires that these four factors be taken into account. There may well be other considerations in specific cases that are put before the tribunal that it would be free to look at. It does not say the board shall not look at or consider other factors.

Ms. Gigantes: Excuse me. Which four are these?

Mr. Sharpe: These are a, b, c and d under subsection 3.

Ms. Gigantes: Thank you.

Mr. Callahan: My concern is that the authority the board has arises from the act. Would it not be wise for total clarity to have have a clause (e) that would say, "such further and other considerations as might be appropriate"?

Mr. Chairman: A lawyer's catch-all phrase.

Mr. Callahan: That is right. That is called a basket clause.

Mr. Sharpe: "Any other relevant factors," or something of that sort?

Mr. Callahan: It is just so that it is clear, because I can see that if this were to be taken beyond that, perhaps to a judicial review, they might say, "Where is the authority for the board having looked at these other factors?" I propose that there be a clause (e) that would say that.

Mr. Chairman: We will accept what Mr. Callahan has said as a further amendment after we debate the main body of the amendment, if he wishes to bring that forward.

Ms. Gigantes: There are two items I would like to raise at this time. On clause 8a(3)(c), I believe we are looking at wording very similar to the Child and Family Services Act.

Mr. Shipley: Yes, it is quite similar. In the Child and Family Services Act, they talk about what programs are available to the child and whether residential placement is appropriate or some other kind is more appropriate. What we have done in clause (c) is collapse all three clauses in the Child and Family Services Act that speak to the same thing.

Ms. Gigantes: What concerns me is that it might be useful to have as comparable a clause as possible, and what is spoken about in the Child and Family Services Act is an alternative program as well as placement.

Mr. Shipley: They use those terms in the Child and Family Services Act because that act applies to a much broader range of services than simply psychiatric services. This act applies to mentally retarded children, people who have physical handicaps, etc., so they use the more general term

"program," whereas we are talking about psychiatric services and it has been restricted to alternatives to psychiatric facilities.

Ms. Gigantes: However, I would like to have a reference to "program" in this clause because I think the reference to "program" would be quite in order here. We may be looking at a placement in a psychiatric facility that should be reviewed to see whether there is an alternative program outside of a psychiatric facility that will meet the child's needs more appropriately.

Mr. Sharpe: The purpose in clause (a) is "observation, care and treatment." In psychiatric facilities, active treatment centres, one is not really thinking of programs as much as active treatment of the child, so that perhaps in clause (c), the concept in clause (a) of whether there is an available alternative place for the observation, care and treatment or means for that available is one we can qualify.

Ms. Gigantes: Let me put it this way: My concern is that when we look under subsection 8a(3) to determine whether the child needs observation, care and treatment in a psychiatric facility, we need to examine precisely whether the child should be in the psychiatric facility or in some other kind of program.

Mr. Sharpe: The other factor is that an available alternative to the facility might be the child's home.

Ms. Gigantes: Yes.

Mr. Sharpe: If the language "program" were used, there would not be a program at home.

Ms. Gigantes: There might well be a program at home.

Mr. Sharpe: There might not be, and if there were not--

Ms. Gigantes: That is why one would look to see whether an alternative program might be what we need instead of a placement in a psychiatric facility.

4:30 p.m.

Mr. Sharpe: What if there were not an alternative program that was considered necessary in the view of the board? If "program" were used in clause (c), one might argue that you are restricted from being able to discharge the child. What the child needs is to go home so the available alternative is that the parents are willing to take the child home with them. There is no program there nor need there be.

Ms. Gigantes: I do not understand what you are saying.

Mr. Sharpe: In clause (c), one of the factors is whether there is an available alternative to the facility in which the child's needs could be met more appropriately. It may be decided that all the child needs is a loving home environment and that the active treatment of a facility is not necessary.

Ms. Gigantes: I do not think the review board would have any problem because it is asked to consider clauses (a), (b), (c), and (d), but it is not

required to make sure the child is dealt with under (a), (b), (c), or (d). These are descriptive. They are not conclusive.

Mr. Sharpe: No, they are not.

Ms. Gigantes: There would be no problem for the review board. If the review board decided that the child should go home to a loving family, that would be at the review board's discretion. It would certainly have that power.

Ms. Hart: I am wondering why Ms. Gigantes wants to narrow the subsection down because "available alternative" is a very broad concept and "available alternative program" is much narrower. If her concern is that there be more alternatives available in the consideration by the review board, then the broadest possible language is "available alternative."

Mr. Chairman: Ms. Gigantes moves that clause 8a(3)(c) of the amendment be amended by inserting immediately after the word "available" the word "program."

Ms. Gigantes: It would simply add the word "program" after "available alternative" in the first line. It would read, "whether there is an available program alternative to the psychiatric facility, in which the child's needs could be more appropriately met."

Mr. Chairman: The amendment to the amendment proposed by Ms. Gigantes means that clause (c) would read "whether there is an available program alternative to the psychiatric facility in which the child's needs could be more appropriately met." It would carry on to clause (d). Is that correct, Ms. Gigantes?

Ms. Gigantes: That is correct.

Mr. Chairman: Is there any further comment with respect to the addition of the word "program" in the context in which I just read it? With the committee's concurrence, I will call for the amendment to the amendment, which is the addition of that word and is Ms. Gigantes proposal.

All those in favour of Ms. Gigantes amendment? All those opposed?

Motion negatived.

Ms. Gigantes: I would like to ask on subsection 8a(1) what exactly would happen to a child who is placed in a facility for psychiatric care, for example in a fairly small community? Would a notice go to legal aid?

Mr. Sharpe: Under the new 19, I will read the provision, which hopefully will be formally moved.

Ms. Gigantes: Where is it in the act?

Mr. Sharpe: This was circulated with the package. It was attached to it actually. Do you have the third page? It is an amendment to section 3a of the act. I believe it says 1c in the upper right-hand corner and there is a little subheading, "notice of child's right." If that amendment carries, hopefully that would be moved.

Ms. Gigantes: So notice would be given to legal aid. There would not

necessarily be a patient's rights adviser in the community or attached to the facility.

Mr. Sharpe: The facilities governed by the Mental Health Act are psychiatric facilities--they are designated at the end of the act--many of which would already have active programs using the patient advocate model or the rights adviser model. To give effect, one would have to key into that model with one of those models to ensure that children in these circumstances are advised of their rights.

Ms. Gigantes: How long would that take in a small community?

Mr. Sharpe: I cannot comment. We do not have any experience in terms of what happens now with the rights advisers and how long it takes them to respond to notices of committal with adults in a small community.

Ms. Gigantes: Am I right in thinking that in a small community, once the legal aid office is informed, some lawyer will be requested to act on behalf of the child and that lawyer will have to seek a legal aid certificate?

Mr. Ewart: Not for these purposes. This would work in the same way as the existing program whereby duty counsel simply goes out on receipt of the certificate of involuntary committal, visits the patient and advises him of his rights. The patient determines whether he wants to exercise those rights and at that point there is an application for certificate and so on. The rights advice is dispatched by duty counsel so there is no need to go through a process of obtaining a legal aid certificate before you get that basic advice.

Ms. Gigantes: To undertake an action, you would have to have a certificate.

Mr. Ewart: Yes. That would be true whether you were seen in the first place by duty counsel or whether it were a psychiatric facility that had a patient advocate and he saw you first. In any circumstance, once you want to pursue an appeal, you go and apply for it. A person at the facility takes your legal aid application and proceeds from there.

Ms. Gigantes: I am concerned about that process, particularly in the case of children, but I am concerned in general because if one has to wait for approval of the legal aid certificate, treatment of a pretty major sort can be commenced without the consent of children if the consent means substitute consent. I wonder whether we cannot make some provision that would ensure that we do not have to allow a child, in particular, to go through fairly major treatment against his or her will before a legal aid certificate becomes applicable and some review can be initiated.

Mr. Ewart: All I can say in the absence of the minister is that we have no authority to consent to the creation of a new program or the expenditure of new money. If that is an item you want to pursue, the whole thing might have to be stood down until there is someone who can speak to program or dollars.

Mr. Callahan: We are dealing with an age group that comes under other legislation under the Ministry of Community and Social Services with our young offenders. Under the young offenders legislation, if a young person is denied legal aid, a judge has the power to order counsel. Is there any way this can be tied in with that to provide that type of accommodation?

Ms. Gigantes: The difference between the young offender and the young psychiatric patient is that the young psychiatric patient may have to submit to treatment before there is an appeal. The young offender just sits in detention and gets treated like other people.

Mr. Callahan: I do not think I would want to make a choice between either one of those. They are both equally abhorrent.

Ms. Gigantes: No, they are not. Think about it.

Mr. Callahan: I would not want to sit in a jail cell.

Ms. Gigantes: I have done it and I would rather do that then sit in a psychiatric centre if I were 14 and somebody had given consent to my treatment and I did not like the treatment.

5:40 p.m.

Mr. D. R. Cooke: Can Ms. Gigantes inform us to what extent a patient--I think what she is getting at is that a patient rights advocate might be more aggressive than the typical duty counsel in making the patients aware if there are problems.

Ms. Gigantes: Even if a typical duty counsel were very alert, it might take some time before the action can be undertaken because you are sitting waiting for a legal aid certificate.

Mr. D. R. Cooke: I do not think that is usually a problem. If reference is made to a counsel who is interested in taking up the patient's cause, he usually does not wait for a certificate.

Mr. Callahan: I would not say that is an absolute. Most counsel would but there are a lot of them who would not.

Ms. Gigantes: I have an area of concern here.

Mr. D. R. Cooke: You mentioned the need for patients' rights advocates. I think you were talking about lay advocates.

Ms. Gigantes: Yes.

Mr. D. R. Cooke: Can you inform us to what extent they are in place so that they could fulfil this role if the legislation permitted it?

Ms. Gigantes: What do you mean?

Mr. D. R. Cooke: If the legislation indicated the new patient would have recourse to a patient rights advocate, are we basically saying the patient rights advocate should be told about the new patient so that he can visit him?

Ms. Gigantes: I have been told by ministry staff that this happens as a matter of course, but there are not patient rights advocates associated with every facility where a child may be held, in a small community for example.

Mr. D. R. Cooke: Where are we going to find them?

Ms. Gigantes: I see a big problem here and I do not think we are really addressing the problem. We are looking at it in textbook terms and we are not dealing with the realities.

Ms. Hart: Given that this seems to be controversial and we were supposed to be doing noncontroversial--

Mr. Chairman: That may be sage advice at this point. We might deal with this section. The parts that Ms. Gigantes is referring to relate to amendment 19. If you want to proceed with Mr. Callahan's amendment and deal with this section now, we can stand down amendment 19 and deal with that at a time when the Attorney General (Mr. Scott) is here.

Ms. Gigantes: Can somebody tell me what amendment 19 is? I am totally confused with these pieces of paper.

Ms. Hart: It is 3g and 3h.

Ms. Gigantes: Do you mean 1c? You do not mean amendment 19.

Mr. Chairman: It is 3g and 3h.

Mr. Sharpe: The 1c replaces old 19.

Mr. Chairman: Do we have the concurrence of the committee to proceed in the way I have just outlined?

Ms. Gigantes: Yes.

Mr. Chairman: I will go to Mr. Callahan so he can get his amendment on the floor. It is an amendment to an amendment actually.

Mr. Callahan moves that subsection 8a(3) be amended by adding "and" at the end of clause (d) and by adding the following clause:

"(e) any other matter that the review board considers relevant."

The intent of that amendment has been spoken to. Are there any further questions or comments on it?

Motion agreed to.

Mr. Chairman: Are we prepared to move on the government amendment as proposed by Ms. Hart dealing with this whole section? Those in favour? Opposed?

Motion agreed to.

Mr. Chairman: We are going to stand down amendment 19. The reality is that there could well be program moneys involved with respect to some of the proposals that are coming forward from Ms. Gigantes, so we had better hold that for the minister. Are you in agreement with that?

Ms. Gigantes: I am happy with that.

Mr. Chairman: Has section 8b been circulated to all members? This is a new government amendment that will be read slowly by Ms. Hart. I hope the members of the committee will not require that it be circulated in advance. If

you are not happy with that, we will stand it down as well. It is a relatively brief amendment.

Ms. Hart moves that the said act be amended by adding thereto the following section:

"8b. Nothing in this act authorizes the psychiatric facility to detain or to restrain an informal patient."

Mr. Chairman: Ms. Gigantes, you are nodding concurrence. Hansard cannot pick that up.

Ms. Gigantes: You just gave Hansard what it needed.

Mr. O'Connor: I do not have the act before me, but is "informal patient" defined?

Ms. Gigantes: It is not.

Mr. O'Connor: What does it mean then?

Mr. Sharpe: Section 8 of the act sets out the definition of "informal patient." Section 8 says, "Any person believed to be in need of observation, care and treatment provided in a psychiatric facility may be admitted thereto as an informal patient on the recommendation of a physician." The term "informal" has caused confusion from time to time. It means nothing more nor less than voluntary. It is the converse of the term "involuntary patient." There is a historical reason "informal" is there, but it is not really relevant today.

Ms. Gigantes: Is it true that we could change the whole act so that any time an informal patient was referred to, we could call that person a voluntary patient?

Mr. Sharpe: Yes. It would have no practical difference except to make it a lot clearer to many people.

Ms. Gigantes: It would be very useful, would it not?

Mr. Sharpe: It would.

Ms. Gigantes: Would it be possible to make such an amendment by saying any time the term "informal patient" is used in the act we change that to "voluntary patient?"

Mr. O'Connor: I think you have to go to each section.

Ms. Gigantes: The answer to that is no? Do we have an answer?

Mr. Chairman: If Ms. Gigantes is looking for an answer from the government, then I guess the answer is no.

Ms. Gigantes: That was a legal question. Is it possible to make an amendment to the act in which we simply say every time we use the term "informal patient," that be changed to "voluntary patient?"

Mr. Sharpe: Mr. Tucker can comment on that.

Mr. Tucker: It would be a deeming provision. You would still be reading the act as it actually states. The black-lettered text would still say "informal" and all you are doing is deeming "informal" to read "voluntary." You would still have people reading the actual words "informal patient."

Ms. Gigantes: We could add a section at the front that says an informal patient is a voluntary patient.

Mr. Tucker: That might not be any more easy to read, though.

Mr. O'Connor: I agree with Ms. Gigantes's sentiment that we should say what we mean in the statute. Why use a word that is there simply for historical purposes that really does not mean what it says in modern context? Perhaps a series of amendments should be introduced to change the word to "voluntary."

However, having said that, I am wondering if there is not a difficulty here wherein somebody who might be admitted to a hospital on a voluntary basis, upon and after observation, if it is deemed he has sufficient mental illness that he ought to remain in the hospital, can his status change so he will then become an involuntary patient, subject to all the provisions we have talked about throughout the act?

Mr. Sharpe: Section 13 says, "The attending physician may change the status of an informal patient to that of involuntary by completing and filing the appropriate certificate, " which is the form 3."

Mr. O'Connor: That answers my question. Thank you.

4:50 p.m.

Ms. Gigantes: I heard a discussion among staff at the front and ministry staff suggesting that it does not make any difference, in terms of the equality rights section of the charter, whether one calls somebody an informal patient or a voluntary patient. It seems to me there is a difference. The Charter of Rights has to do with liberties and freedoms of the individual and the right to benefits under the law. When you say somebody is doing something voluntarily, you are not taking away those rights. I would like to ask that we get an amendment that will deal with the process in the act that refers to an informal patient, and change each to a voluntary patient.

Mr. Warner: If the committee is agreed that it is preferable to use the term "voluntary" as opposed to "informal," but is a little reticent to venture into it because it is of the opinion that it needs to be amended in each and every instance where it occurs in the act, I believe there is an acceptable procedure in parliamentary terms whereby the committee can agree that since the act is going to be reprinted before it is presented to the House, in each instance where the term "informal" appears, it shall be replaced by the term "voluntary," and that it be done before the bill is reprinted.

It is a procedure that has been used previously in other situations. It is a very simple amendment. In practical terms, it will simply require a bit of time for the adjustment to be made. It is only one amendment and it applies to the entire act. Members may wish to consider that if they are attracted to the proposition that the term should be changed.

Mr. Tucker: If the Mental Health Act was before the committee instead of a bill to amend various statutes, Mr. Warner's suggestion would work. However, since this is a bill to amend various statutes, it only has specific amendments to various statutes, one of which is the Mental Health Act. We do not have the whole Mental Health Act before us. We have only subsections of section 31 before us, amending various parts of the Mental Health Act; so that technique will not work. If the Mental Health Act was before us, then the committee could simply instruct legislative counsel to make that change all through the bill, but it is not the Mental Health Act that is before us.

Mr. Warner: I appreciate the assistance of counsel. I might draw to the committee's attention that since we have opened the Mental Health Act to make certain modifications to it, we have opened the Mental Health Act totally. I do not think it would be ruled out of order to make references when the reference we wish to make is in keeping with the principle of making this particular act conform with the charter.

I go back to the argument my colleague makes that in the spirit of the charter it is surely better to refer to someone as a voluntary patient rather than an informal patient. In that regard, I think it would be perfectly in order to instruct that the change be made in each and every instance throughout the act. The argument on our side is that we have opened up the entire act, although we are only attempting to amend particular portions of it, and it is not out of order to instruct staff to make the necessary changes throughout the entire act in this specific instance because of the nature of the change we are proposing.

Mr. Tucker: We would then have a section in this bill that says something along the line that every reference in the Mental Health Act to "informal patient" shall be changed to "voluntary patient."

Mr. Warner: That is correct.

Mr. Tucker: That is a deeming provision. The act will still read it that way because we will not be reprinting the Mental Health Act; we will be reprinting Bill 7.

Mr. Warner: When Bill 7 passes, the Mental Health Act will have to reflect these changes. Is that not correct.

Mr. Callahan: By reference, it will.

Mr. Tucker: That is what I am saying, by reference. It will not be a direct change.

Mr. Callahan: I would like a little clarification because the amendment that has just been read by my colleague seems to talk about no restraint, or whatever the other word was. How does that jell with subsections 8a(1), (2) or (3) with respect to the three-month and the six-month period. They are under restraint there, are they not? How can you say, on the one hand, they will not be under restraint and then have a three- or six-month period?

Ms. Gigantes: We are talking about involuntary patients.

Mr. Callahan: If you look at 8a(1) it says, "A child who is 12 years of age or older but less than 16 who is an informal patient."

Mr. Sharpe: The amendment says nothing under this act. Whatever the common law authority may be to detain and restrain persons under 16, whether it is parental authority or that of a guardian in a children's aid society, this provision does not interfere with whatever that power may be.

All we are saying in the amendment is that nothing under the Mental Health Act shall be taken as allowing the facility to impose detention or restraint on an informal patient. That would not affect the provision, for example, in section 8a, which is aimed at a situation where someone under 16 is signed into a hospital as a presumed informal patient on behalf of his parents or guardian and is told that the detention does not emanate from the Mental Health Act, but it emanates from the common law *parens patriae* power of a parent or guardian, whatever that may be.

Mr. Callahan: The reason I asked that question is, was that not the reason informal is used as opposed to voluntary? Clearly, if a child is signed into a facility acting under the authority of his parents he is not a voluntary patient but an informal patient. Is that not the reason for the word "informal" as opposed to "voluntary?"

Mr. Sharpe: The historical reason the word "informal" was used--in fact, it is still the principle in some provinces--is that a patient who was in the hospital by his agreement, who wanted to leave, could not simply discharge himself. He would have to give notice to the administration and, depending on the particular province, the hospital would have up to 24 hours to decide whether to commit him or not. In other words, he could not leave immediately. This was essentially an adult provision. For this reason, "informal" was used. It was that one had no formal documentation certifying that he was not voluntary.

Mr. Callahan: But how can you say that the child who was signed at the behest of his parents was a voluntary patient?

Mr. Sharpe: Unless they are volunteered by their parents.

Mr. Callahan: Yes, but you cannot be voluntary and have someone else have some form of control over you to volunteer you.

Mr. Sharpe: In that sense, you are correct.

Mr. Callahan: Then "informal" should probably be the word to choose than "voluntary." It at least delineates the difference between a voluntary patient, that is, an adult who makes a decision on his own to sign himself into a hospital versus the child who is actually being surrendered to the institution on the authority of his parents.

Mr. Sharpe: You could have an adult who was declared mentally incompetent, where there is a committee or guardian of that person who is providing the same kind of parent-like power over him to sign him into a facility. I think the word "voluntary" is really a sense of under this act for the purpose of the Mental Health Act these people are voluntary. There may be some other authority by which they are not free to leave the facility. But in that case, it is not the physician deciding to keep them; it is someone, a proxy standing in their shoes, who is making the decision on their behalf and, in a sense, acting as a voluntary exercise of free will on behalf of these individuals, someone external to the facility.

Mr. Callahan: In the case of the committee, there would already been have a decision made by a doctor whether the person was unable to look after himself or to manage his affairs.

5 p.m.

I am speaking against changing the wording because I think that very argument could be raised. If you change words without some reason for it, you are going to get someone raising the question whether or not a child is a voluntary patient in the light of the fact he has been signed in by his parents. Using the word "informal" is perhaps better left the way it is.

Mr. Chairman: I have a number of speakers lined up: Ms. Hart, Ms. Gigantes and Mr. Warner.

Ms. Hart: Just one comment. I am not entirely certain that, because we are looking at the Mental Health Act under the Charter of Rights, this enables us to open up the whole thing. To speak personally, if it is the committee's will to look at this language, "voluntary" versus "informal," I would be a lot more comfortable (inaudible) to make sure that we put our minds to exactly the changes we are going to make.

Mr. Chairman: That is an excellent suggestion. Then we will know exactly what we are doing if it is to be done.

Ms. Gigantes: I have a motion to this. I move that this committee instruct legal counsel to amend Bill 7 so that in each case where the term "informal patient" is used in the Mental Health Act, the term "voluntary patient" is substituted therefor.

Mr. Chairman: May I get some clarification before I put that amendment formally? It would appear that this amendment exceeds the scope of direction given to this committee in the first instance. As chairman I have to question the appropriateness of the amendment. I am open to being convinced otherwise, but I have some concerns about it and I wanted to express them before we went to any kind of formal vote on the issue.

Mr. Callahan: It might have been better to call the question, Mr. Chairman.

Mr. Chairman: I would like to hear from some of the staff with respect to my concerns, because we are spilling over into another act rather considerably, an act that Ms. Hart has very appropriately pointed out is not before us, and I share those concerns.

Mr. Warner is the next speaker. He may wish to clarify for me, but if anyone wants to comment, by all means go ahead. Otherwise, I will put the motion.

Mr. Warner: At the bottom of page 13 of the original version of Bill 7, subsection 31(2) said:

"Subsection 29(3) of the said act is amended by striking out 'majority' wherever that word appears and inserting in lieu thereof in each instance '16 years.'"

The reference then, which was to subsection 29(3), has five sections to it. We simply determined that in that instance, wherever one particular word appeared, we would substitute another word for it.

Mr. Callahan: That is within the mandate of the charter.

Mr. Warner: Right, and I would argue that the principle behind the amendment is in keeping with the spirit of the charter.

Mr. Callahan: Why?

Mr. Warner: Because the emphasis in the charter is on individual rights and freedoms, correct? And there is at least a connotation that it is better to be a voluntary patient than to be an informal patient. It at least clarifies your status. Thus, it is proper and, I would think, a better situation to refer to an individual as a voluntary patient than as an informal patient. I am also saying there is nothing out of order with our suggesting, since we have done it in one instance and probably in others, to decide to substitute one word for another wherever the other word happens to appear.

The amendment calls for it to be expanded beyond one section of the act. The fact remains that while it is a reference--and I understand counsel's argument about its being a reference type of motion--unless I am totally mistaken, the Mental Health Act, subsection 29(3), will be reprinted, removing the word "majority" and substituting for it "16 years." I state that the same effect will be caused should you agree to my colleague's amendment. I do not see anything out of order with it and I think it is an entirely practical matter and in keeping with the spirit of the charter.

Mr. Callahan: Surely the mandate of this committee is to change the acts so that they do not contravene subsection 15(1) of the charter. You tell me where changing the word "informal" to "voluntary" in any way fits into that mandate. How could anyone ever challenge under subsection 15(1) the fact that you are called an informal as opposed to a voluntary patient? Is it simply a matter of terminology.

Mr. Warner: I do not think we were ever in a defensive process. We are not simply making amendments in order to protect ourselves against possible legal actions in the courts. We have gone beyond that. Surely to goodness what we are attempting to do in all of these acts is to bring them into line with both the terms and the spirit of the charter. In that regard, the change recommended by my colleague is perfectly in order.

Mr. Chairman: Can we hear from Ms. Gigantes one more time? Then I want to hear from the draftsman on the impact this might have, because I think we have to make sure we are operating within the context of the mandate of this committee before we exceed that authority.

Ms. Gigantes: Section 15 of the charter talks specifically about equal benefits under the law, equal benefit of the law. When we look at the Mental Health Act, we are looking at an act that can deprive people of the rights they have under the charter, and it does so in very specific terms for very specific reasons. It defines the people from whom rights are removed in clause 1(c), involuntary patients. It therefore follows that everybody who is not an involuntary patient must be a voluntary patient and must have benefit of the rights available under the charter, section 15, just as any other individual does.

The trouble with the term that exists in the Mental Health Act now, which is "informal patient" as opposed to "involuntary patient," is that it does not draw to the mind of the reader or of the people who will be called upon to carry out the terms of the act the real difference that we intend in terms of the deprivation of rights on the one hand and the respect for rights on the other.

Let us be clear: The involuntary patient is a patient from whom rights have been removed, and we do that for specific, reasonable purposes. If we want to contrast that clearly and make sure both that the legislation is readable and that the intent of the Legislature will be easily understood by people who will be carrying it out, we should use the term "voluntary patient."

Mr. Chairman: If there is no further comment, I will allow Ms. Gigantes to review the document that is being shared with her now. When she is ready, I will call the motion.

Mr. D. R. Cooke: Were we not going to hear from the draftsman?

Mr. Chairman: I offered that opportunity for any further spokesmen to address the issue. You know what my concern is. I think it is shared by Ms. Hart, certainly by Mr. Callahan and perhaps by others. If you are ready to call the question, I will do so.

Ms. Gigantes: The motion I placed on the floor was not a motion of amendment; it was a motion of instruction. What has been provided me as an alternative is an amendment. I want to be assured that the amendment is going to have the same effect as my motion. The amendment says:

"I move that the said act be amended by striking out 'informal' wherever it occurs in relation to 'patient' and inserting in lieu thereof in each instance 'voluntary.'"

If I can feel that the intent of the motion I placed is going to be met satisfactorily by this amendment, then I will happily place the amendment instead.

Mr. Tucker: Perhaps we can get some clarification on the motion that is before us. Does the motion mean that only in Bill 7 where the word "informal" is used we substitute the word "voluntary"?

Ms. Gigantes: No. It means, and it says, wherever it appears in the Mental Health Act. In effect, what I was calling upon the committee to approve was a motion that legal counsel prepare amendments, which we could breeze through very quickly if we were in agreement, to substitute the term "voluntary" for "informal."

Mr. O'Connor: We are not doing any amending today. We are simply--

Ms. Gigantes: There are not very many references in the Mental Health Act to informal patients. It would not take very much, and that would satisfy the whole concern about what is in order and what is not, in technical terms.

Having had this discussion, I think my motion is probably still the best way to do it so that we are not into technical hangups. I would therefore ask that the committee give support to the motion.

Mr. Callahan: How does the change from "informal" to "voluntary" fall within section 15, which says, "without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability"? It does not change it one iota.

I suggest that if you go outside the terms of reference, or our mandate, you allow some other member to decide to bring something else in that does not fit within that framework. Either we are bound by it or we are not bound by it.

Mr. D. R. Cooke: We have already done that.

Mr. Callahan: I can think of a couple where we may have done it. We may find some real difficulties when that bill comes before the House, but that is our mandate.

Ms. Gigantes: Take a look at section 15. That is our mandate.

Mr. Callahan: That is right, but you show me where the person is being discriminated against--let us forget the other ones: religion, sex, age--because of mental or physical disability. How does the changing of the word from "informal" to "voluntary" affect discrimination against that person on that basis?

Ms. Gigantes: It makes clear that when we say somebody has a mental disability--just precisely what the Mental Health Act deals with--we define very carefully and closely who that person is who has rights removed because of mental disability.

Mr. Callahan: But they are no different. We are all agreed that they are synonymous words. How is it within the mandate we have under subsection 15(1) of the charter?

Ms. Gigantes: "Informal patient" is not something that is either easily read or easily administered. To say "voluntary patient" makes our meaning clear and also accords with the definitions section of the act, in which we remove rights only from involuntary patients.

Mr. Chairman: I have had members of the committee ask me to call the motion. It will be a motion rather than an amendment by Ms. Gigantes, with a direction to the draftsmen with respect to the changes as outlined. I think they are well understood.

All in favour of Ms. Gigantes's motion? Opposed?

Motion agreed to.

The committee adjourned at 5:14 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
TUESDAY, JUNE 24, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callanan, R. V. (Brampton L)

Cooke, D. K. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Also taking part:

Lane, J. G. (Algona-Manitoulin PC)

Clerk: Mellor, L.

Staff:

Tucker, S., Registrar of Regulations, Legislative Counsel

Witnesses:

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

Ward, C. C., Parliamentary Assistant to the Minister of Health (Wentworth North L)

Sharpe, G., Counsel, Legal Services Branch

From the Ministry of the Attorney General:

Ewart, J. D., Director, Policy Development Division

From the Ministry of Housing:

Larden, A. E., Policy Adviser, Ontario Buildings Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 24, 1986

The committee met at 4:26 p.m. in room 228.

EQUALITY RIGHTS STATUTE LAW AMENDMENT ACT
(continued)

Consideration of Bill 7, An Act to amend certain Ontario Statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms.

Mr. Chairman: Members of the committee, I have one problem I want to share with you before we get started officially. It is with respect to a little bit of housekeeping.

With regard to our schedule for the next short while, as I explained yesterday, we will not be sitting on Monday or Tuesday of next week. The House may rise during the time we will be sitting, or when our next meeting takes place following next week. We do not yet know for sure.

We may have some additional legislation coming to the committee which will require advertising. I want to advise the committee in advance that if it wishes, the steering committee--which will be operating during the absence of the full committee--should be given the authority to lay on the advertising, because we may have to move with that immediately. We have already appointed individuals to that steering committee.

Is there any problem with respect to what I have just outlined?

Ms. Gigantes: Perfect.

Mr. Chairman: Okay. We are pleased to have the Minister of Health (Mr. Elston) here to assist us in our deliberations with this bill. We can start section 31 again.

On section 31:

Mr. Tucker: Before we get started, the committee instructed me yesterday to find all the references to "informal" in the Mental Health Act and to prepare motions. I have found them; there were nine references in three sections of the act. I have prepared the motions and have them here for the committee.

Hon. Mr. Elston: As I understand it, we are currently dealing with an amendment to section 8b moved by Ms. Hart, which must be finalized before we go on to other motions.

Mr. Chairman: That is right. You can see the term "informal patient," which triggered the discussion with respect to other areas of the act where it may have impact.

Ms. Gigantes, could you briefly set your case before the minister, if you wish to so do? I believe that is what you want to do at this time.

Ms. Gigantes: The reason I proposed the motion was that, in terms of the Mental Health Act, the distinction between "voluntary" and "involuntary" is a key one. A voluntary patient does not have rights removed; an involuntary patient, now called an informal patient, does. It relates directly to the charter because of that.

I proposed that we change "informal" to "voluntary" because it gives a much clearer expression of the legislative commitment. Patients who are not involuntary shall have their rights protected; only those patients who are involuntary shall have their rights removed.

4:30 p.m.

Hon. Mr. Elston: There is one item that has been brought to my attention. We can have a situation, particularly with a child, where the difference between "voluntary" and "involuntary" does not exactly apply. The parents, having brought the child to the facility, make the patient informal rather than voluntary or involuntary. It seems to me that it is an important distinction we should recognize.

Ms. Gigantes: Within the Mental Health Act and the amendments we are dealing with now, we provide for the review board to assess whether the child shall become an involuntary patient. The child can initiate a review of that and the course of treatment program. The child's situation is quite clear within the framework of the Mental Health Act. It is also important to make clear that the child is a voluntary patient until he is declared an involuntary patient.

Hon. Mr. Elston: It is my advice that the question is not whether the child becomes a voluntary or involuntary patient, but whether the determining body says the child shall remain in the institution or be removed to another facility. That being the case, it does not comply totally with the voluntary/involuntary distinction you raised with respect to changing it to become informal.

Ms. Gigantes: If the child is removed from a psychiatric facility and placed in another program by a decision of the review board, then the question is not raised. Another act governs the rights of the child; the Family and Child Services Act, for example.

Hon. Mr. Elston: I do not want to prolong the discussion on this, because I know you have probably deliberated it before. I put the case as to why "informal patient" in this set of circumstances is a better term to retain. If we can put the question, it would be resolved instead of going on at length, because we could probably agree to disagree over a long series of deliberations.

Ms. Gigantes: If that is the way it will be decided, so be it.

Mr. Chairman: Mr. Callahan has a supplementary on this point.

Mr. Callahan: My reason for not changing the wording is that a young person being brought along by his parents would hardly be called a voluntary patient. "Informal" is much more appropriate than "voluntary."

Hon. Mr. Elston: I appreciate the intervention. It complies with what I raised earlier, Mr. Callahan. Your rationale is good.

Mr. Chairman: What is your wish at this point, Ms. Gigantes? Mr. Warner, do you want to make a comment?

Mr. Warner: I appreciate that the clerk has circulated the appropriate drafting needed to fulfil the motion passed by the committee yesterday. Since we want to get on with other matters, would the chair deem that this has been passed and move on to the next matter? The motion was carried yesterday in committee.

Mr. Callahan: Which motion? It was not even voted on.

Mr. Warner: It was the motion.

Mr. Chairman: Ms. Hart, it was your motion.

Mr. Callahan: The amendment--

Mr. Chairman: We are talking about section 8b. "I move that this committee instruct legislative counsel to amend Bill 7 so that in each case where the term 'informal patient' is used in the Mental Health Act, the term 'voluntary patient' is substituted therefor."

Mr. Callahan: On a point of order, Mr. Chairman: That amendment was moved and not the amendment that was read into Hansard. The amendment in Hansard was directing legal counsel to look into the matter and to draft the amendment. There was never a vote on the question of changing that, because we are not sure what effect that has on the other sections of the act.

Mr. Chairman: Yes.

Ms. Gigantes: No. It was because we were told we could not technically amend the act throughout changing those terms without dealing with each specific amendment. That was why I moved the motion in the way I did.

Mr. Chairman: In fairness to Mr. Callahan, even though there was very clear comment by the chairman at the time, who happened to be me, with respect to the fact that we had some difficulty in dealing with what appeared to be something over and above the mandate this committee had been given, some people indicated that they did not want to deal with that, even if appropriate to so do, unless they saw the sections specifically.

Ms. Gigantes: The only section that seems to concern anyone is the one affecting children, and that one we certainly see.

Mr. Chairman: Okay. What do we have here? Ms. Gigantes, do you now wish to move your amendment to see whether it carries? These are the ones the draftsmen were advised to prepare for you. Obviously, they were not prepared until today, so we have not moved on those.

It is your amendment, Ms. Gigantes. Why do you not proceed with the one on section 8? It is my understanding that if the first one carries, the others will fall into place automatically.

Ms. Gigantes: I will be happy to oblige.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 8 of the said act is amended by striking out 'informal' in the third line and inserting in lieu thereof 'voluntary.'"

That being the amendment, I will ask for a vote on it. Shall the amendment carry? Opposed?

Mr. Warner: You are switching your vote.

Motion negatived.

Mr. Chairman: The amendment loses. Therefore, the others will not carry either.

Mr. Warner: Why?

Mr. Chairman: Because they are basically the same. Do you want to go to the second one? It says exactly the same thing as the first one.

Mr. Warner: Would you permit me a moment?

Mr. Chairman: I see some manoeuvring going on.

Mr. Warner: It is always pretty interesting when members of committee switch their positions overnight.

Mr. Chairman: Sometimes additional information comes to their attention. I do not know. You can ask the members of the committee why they did that.

Mr. Callahan: In fairness, the members of the Conservative Party did not switch their votes. The vote was on the question of whether we had authority within the framework of our mandate, dealing with Bill 7, to ask legislative counsel for those amendments. They voted in favour of getting those from legislative counsel. In fairness to the members of the Conservative Party, we did not vote on this issue.

Mr. Chairman: Thank you, Mr. Callahan. That clarification is welcome. Can we go on? The minister is leaving, and the parliamentary assistant will take over.

Can we go back to section 8b? Ms. Hart, I ask that you move that one. The word will not change. You have moved the amendment, according to the clerk.

Ms. Hart: Yes.

Mr. Chairman: To refresh everyone's memory, would you repeat your motion, please?

Ms. Hart: I moved that the said act be amended by adding thereto the following section:

"8b. Nothing in this act authorizes a psychiatric facility to detain or to restrain an informal patient."

Motion agreed to.

Ms. Gigantes: Have we passed the amendment related to section 8a?

Mr. Chairman: No. We did section 8b.

Ms. Gigantes: We did what? I do not believe we completed section 8a.

Mr. Chairman: I am getting conflicting information from two sources, one of which says we did it yesterday. Ms. Gigantes says we did not. I do not have my notes in front of me at the moment.

Ms. Gigantes: I said I do not believe we did it.

Mr. Chairman: I am being informed by everyone that we did it yesterday.

Ms. Gigantes: Section 8a?

Mr. Chairman: Yes.

Clerk of the Committee: Yes, we did it yesterday.

4:40 p.m.

Ms. Gigantes: How could we have done section 8a when we were talking about an amendment related to section 8a? Did we not stand it aside until the question of "voluntary" and "involuntary" was dealt with?

Clerk of the Committee: That is the next section. We dealt with 5a, which was an amendment to 8a. We postponed any further dealing on 19, which leaves subsections 3g and 3h, on agreement with Ms. Gigantes at that point because of legal implications.

Mr. Chairman: Are you satisfied, Ms. Gigantes, that we have dealt with section 8a? I gather you are not.

Ms. Gigantes: I understood we had left the final decision on section 8a until we had decided the question of voluntary and involuntary.

Mr. Callahan: If I can help, we dealt with that because I had added (e), the basket clause; right?

Ms. Gigantes: Right. We did it. Thank you, Mr. Chairman.

Mr. Chairman: Can we move to 19 now? These are subsections 3g and 3h, numbered 19 on your index.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsections:

"(3g) Section 30a of the said act is amended by adding thereto the following subsections:

"Notice re competence to patient

"(1a) A physician who determines that a patient is not mentally competent to consent to treatment, to examine a clinical record or to manage his estate shall give or transmit a notice in writing of that determination to the patient and to the area director for the area, in accordance with the Legal Aid Act, in which the psychiatric facility is located.

'Notice of child's right

"(1b) The officer in charge shall give or transmit a notice in writing of the child's right to apply to the review board under section 8a to the child and to the area director for the area, in accordance with the Legal Aid Act, in which the psychiatric facility is located.

"(3h) Subsection 30a(2) of the said act is amended by inserting after '(1)' in the first line '(1a) or (1b)' and by striking out 'regional' in the third line and in the fifth line."

That amendment has now been placed. I am aware that 20 is an amendment by Ms. Gigantes, relative to subjection. I presume there may be some discussion on 20 as well as 19 when we begin discussing this.

Is it your understanding that 20 has been defeated?

Ms. Gigantes: Yes.

Mr. Chairman: Then we will go to 19. Comment on 19?

Ms. Gigantes: How quickly is the notice given? Is it immediate? It is understood as immediate. Does that mean a child might get to a review board, if he desired, within seven days?

Mr. Ward: I understand it is transmitted immediately.

Ms. Gigantes: There is the transmission of the notice to legal aid. How long would it take a child to get to review board?

Mr. Sharpe: It is the same procedure used for the review board; so it is a maximum of seven days.

Motion agreed to.

Ms. Gigantes: What are we looking at now?

Mr. Chairman: These are minor amendments, starting with 6a. Ms. Hart, I believe you are moving them.

Mr. Ward: You can move them all. They are all the same.

Mr. Chairman: Yes, we can do them all together if you like: 6a, 6b, 6c and 6d.

Ms. Gigantes: What are we looking at?

Mr. Chairman: We are looking at 6a, 6b, 6c and 6d. They are all amendments, wording changes, housekeeping items.

Mr. Ward: Changing the word "assessment" to the word "examination."

Mr. Chairman: Let us take a moment to look at them. We can deal with them as a package because they are identical.

Ms. Gigantes: Could I ask the purpose of the amendments? They are the same in each case.

Mr. Sharpe: About three weeks ago, we had a discussion on the words "assessment" and "examination." The committee agreed it would change "assessment" to "examination" in some places to clarify what we are doing.

Ms. Gigantes: Good.

Mr. Warner: Let us go.

Mr. Chairman: If you are ready, I will ask Ms. Hart to move the amendments for all four sections.

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Subsection 10(1) of the said act is amended by striking out 'assessment' in the last line and inserting in lieu thereof 'examination.'"

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Subsection 10(3) of the said act is amended by striking out 'assessment' in the sixth line and inserting in lieu thereof 'examination.'"

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 11 of the said act is amended by striking out 'assessment' in the last line and inserting in lieu thereof 'examination.'"

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 12 of the said act is amended by striking out 'assessment' in the first and in the third line and inserting in lieu thereof 'examination.'"

Motion agreed to.

Mr. Chairman: Ms. Gigantes, the next is one we had to come back to.

Ms. Gigantes: Which is?

Mr. Chairman: I was thinking of motion 8. I am advised that motion 6 has to be dealt with as well. You can deal with them in whatever order you want. We have had considerable debate on the 120 hours vis-à-vis six hours, which is your amendment to section 31 on subsection 14(3). Let us deal with 8 first, and get it over with.

Ms. Gigantes: Is that the original numbering?

Mr. Chairman: I believe it is. I am sure you can argue the point without even having the amendment there. It is down to the principle of

whether the 120 hours remains or you reduce it to six. Alternatively, I advise members of the committee that another amendment of something in between could be considered. It is a judgement call on this one.

4:50 p.m.

We have had a lengthy debate. The chair is not trying to direct the committee, but I hope we do not go into all the arguments again. Perhaps we can try to hear the parliamentary assistant's views on this. We did discuss it, as I recall, but it is subject to comment and clarification from the committee. I do not believe we had a government representative present when we discussed this originally, and we wanted to come back to it.

Ms. Gigantes: Yes, we did. We had the Attorney General who suggested that we wait for the Ontario Hospital Association to make a recommendation to us.

Mr. Chairman: That is what it was. Okay.

Ms. Hart: Before we go to the parliamentary assistant, I take it these motions have both been moved so we are into the discussion stage and it is an appropriate time for an amendment to be proposed.

Clerk of the Committee: Yes.

Ms. Hart: I propose an amendment then.

Mr. Chairman: We are amending the amendment. Ms. Hart, do you wish to amend it?

Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(1d) Subsection 14(3) of the said act is amended by striking out '120 hours' in the fourth line and inserting in lieu thereof '72 hours.'"

Ms. Hart: I am sorry. I read motion 8. I should have read motion 6 first. I intend to propose amendments to both sections.

Mr. Chairman: All right. The 120 hours have been changed to 72. Ms. Gigantes's motion calls for six. Ms. Gigantes, I am sure you want to speak to this.

Ms. Gigantes: While I prefer six, 72 is better than 120. If there is government support for that, we will live with it.

Mr. Chairman: All right. If there are no other comments, I will call for the motion, which is the amendment to the amendment, recognizing that if that passes, we will amend the motion and carry that as amended.

Motion agreed to.

Mr. Chairman: Shall the motion, as amended, carry?

Motion agreed to.

Mr. Chairman: You now have a change that you are aware of from 120 hours to 72 hours.

Ms. Hart: That was just one motion.

Mr. Chairman: Yes. Do you have another one you wish to go to now?

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Clause 9(5)(b) of the said act is amended by striking out '120' in the fourth line and inserting in lieu thereof '72.'"

Motion agreed to.

Ms. Gigantes: I had a previous amendment I want to withdraw and substitute therefor the following.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 62 of the said act is repealed and the following substituted therefor:

"62(1) All actions, prosecutions or other proceedings against any person or psychiatric facility for anything done or omitted to be done in pursuance or intended pursuance of this act or the regulations shall be commenced within two years after the patient to whom the action, prosecution or proceeding relates is discharged from or ceases to receive treatment at the facility and not afterwards."

Mr. Callahan: What is the present limitation period? Let us start with that.

Ms. Gigantes: In the act?

Mr. Callahan: Yes.

Ms. Gigantes: Six months.

Mr. Callahan: Does that not correspond with the limitation against the doctor?

Ms. Gigantes: No.

Mr. Warner: It is two years.

Ms. Gigantes: The Public Hospitals Act has a two-year limitation period.

Mr. Callahan: Under the Limitations Act, is it not six months against the doctor?

Mr. Ewart: It is six months under the Public Authorities Protection Act, if he is acting under a statutory authority, but the general limitation period is set out in the Health Disciplines Act as one year from discovery.

Mr. Callahan: It is difficult enough to keep track of the limitations as they are.

Mr. Ewart: The Attorney General spoke to that issue when it was

debated at some length, and he emphasized that he did not favour a piecemeal approach. We have an overall review of the Limitations Act under way similar to the one introduced by the previous Attorney General. Once you start poking at this one, you have the Mental Hospitals Act, the Public Authority Protections Act and the Health Disciplines Act.

Mr. Ward: There are serious implications in terms of liability insurance.

Mr. Ewart: It was the minister's view--

Ms. Gigantes: Did I understand you to say there had been a previous proposal to review limitations?

Mr. Ewart: The previous Attorney General introduced a new Limitations Act in 1983 which would have accomplished an overall reform of all limitation periods.

Ms. Gigantes: What did it say about the Mental Health Act?

Mr. Ewart: It would have repealed that one as part of an overall package.

Ms. Gigantes: What would the applicable limitation have been for an action of this kind?

Mr. Ewart: As I recollect, it would probably have been two years.

Ms. Gigantes: That is right.

Mr. Callahan: There is an act called the Limitations Act containing a whole slew of limitations. Limitations appear in every statute in Ontario and if you are talking about reviewing them, it would be wise to have them all in one act so that somebody looking up a limitation knows exactly where it is. If you do not, you can have limitations contrary to one another. I was joking when I mentioned the lawyers. It is their job to make certain they reach limitation periods, but it can also rebound on a claimant. If his lawyer misses the limitation, he is without any remedy. It has far-reaching effects.

Ms. Gigantes: I propose we make sure psychiatric patients have a remedy within two years as do patients under the Public Hospitals Act. The previous government proposed a more generous limitation period than the existing one under the Mental Health Act, which I assume is practically useless.

Mr. Callahan: It may be generous, but if other limitation periods in similar cases are different, you will have confusion. This arose in Highway Traffic Act actions where the limitation period was one year and in the Fatal Accidents Act which I think had two years, or it may have been the reverse. They have been brought into line now because of the difficulties that arose from--

Ms. Gigantes: This would bring it in line with the Public Hospitals Act and put less onus on lawyers to remember different dates.

Mr. Callahan: I prefer to see all the limitations in a single act.

Ms. Gigantes: That may be fine when we come to do a general

revision, but in the meantime psychiatric patients should have as much right as public hospital patients. It is a charter issue, very helpful to lawyers. Question, Mr. Chairman?

Mr. Chairman: If you are ready for the question, yes. This finishes section 31.

Ms. Gigantes: I want to raise one other item, with your indulgence.

Mr. Chairman: I only raised that for the committee's information, because Mr. Ward can then take his leave if he wishes. We would be delighted to have him spend the rest of the time here, knowing he probably has little else to do, but it is entirely his judgement call.

Ms. Gigantes: There is one more thing in which I am sure Mr. Ward will be interested.

Mr. Chairman: I will call the question. Shall the amendment carry?

Mr. Callahan: You are not going to take the vote on that?

Mr. Chairman: I called it.

5 p.m.

Mr. Warner: On a point of order, Mr. Chairman: The chair properly conducted the vote procedure. If other members are not entirely aware of the procedure, it is hardly cause for the chair to retake a vote. I am sure all members are aware that the normal procedure is to ask if the amendment shall carry. If there are no dissenting voices, then there is no need to take a hand count.

Mr. Callahan: On the point of order, Mr. Chairman: There was a dissenting voice. I asked for a poll of the votes.

Mr. Warner: I did not hear a dissenting voice.

Mr. Chairman: There was only a momentary pause, and Mr. Callahan indicated that he was not in concurrence with the carrying of the amendment.

I have not as yet ruled that the amendment did carry, because there was some confusion on the vote. Wanting to be absolutely assured in my own mind that every member voted according to his or her conscience on this issue, I prefer that the vote be retaken since no one has moved from his or her respective place. I shall call the vote again.

Let us do this by a hand vote rather than a voice vote to be absolutely certain of where we are going.

Shall the amendment carry? Opposed?

Motion negatived.

Ms. Gigantes: If I could ask your indulgence and that of committee members, there is an item I overlooked earlier. It was in connection with the original amendment numbered 4 which dealt with the question of restraint. The amendment I put at that time, as you will recollect, would have deleted the use of chemicals from restraint mechanisms. However, there was another part of that amendment which I want to place separately, if I may.

Given my review of the transcript of our hearings, there was support both by Mr. Ward and by the Attorney General for the element of the motion I want to put. I refer to our discussions of Monday, June 2, 1986, in which both Mr. Ward on behalf of the Ministry of Health and Mr. Scott on behalf of the Ministry of the Attorney General indicated they would be happy with the following motion.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(2) Clause 1(t) of the said act is amended by adding thereto immediately following the word 'control' the words 'when necessary to prevent serious bodily harm to the patient or to another person.'"

Mr. Ward, do you have any comment on this?

Mr. Ward: We support that amendment, as previously indicated. When it was first put it included chemical restraint.

Ms. Gigantes: That is correct.

Mr. Ward: We have no objection to that.

Mr. Chairman: Could you provide the clerk with a copy of your amendment, please?

Ms. Gigantes: It is original amendment number 4, ending at the word, "person."

Mr. Chairman: In fairness to Mr. Callahan who has just come back into the room, could you capsulize quickly what this amendment is about and then Mr. Callahan will be able to vote on it?

Ms. Gigantes: The amendment deals with the question of restraint and adds after the word "control" in clause 1(t)--

Mr. Callahan: This is the one taking chemical restraint out.

Ms. Gigantes: Except I am dealing only with the first section of the previous amendment which was supported at that time by Mr. Ward and by the Attorney General. It is number 4 in the original document. I have deleted everything after the word "person," and Mr. Ward has reaffirmed his ministry's acceptance of that amendment.

Mr. Callahan: I have a note that it was defeated on June 2, 1986.

Ms. Gigantes: That is correct.

Mr. Ward: At that time it was the entire motion which included chemical restraint. The Attorney General and the Minister of Health (Mr. Elston) have both indicated they do not object to the amendment that is now being put.

Mr. Callahan: But we are reopening the question.

Ms. Gigantes: I am making a separate amendment.

Mr. Ward: It is different from the original amendment.

Ms. Gigantes: There were two subjects treated in that first amendment.

Mr. Chairman: I will call the amendment, if you are ready for the vote.

Motion agreed to.

Section 31, as amended, agreed to.

Ms. Gigantes: Where are we going, Mr. Chairman?

Mr. Chairman: Subject to any comment you may wish to make, it is my understanding that we now have dealt with the health-related matters and Mr. Ward can be given leave to depart.

On section 8:

Mr. Chairman: On May 5, Mr. D. R. Cooke had an amendment under section 8. We can start with that while you are finding the correct spot in your material.

Mr. Callahan: What number is it?

Mr. Chairman: It is not numbered.

Mr. D. R. Cooke moves that clause 1(e) of the Coroners Act, as set out in section 8 of the bill, be deleted and the following substituted therefor:

"(e) 'spouse' means a person of the opposite sex,

"(i) to whom the deceased was married immediately before his or her death,

"(ii) with whom the deceased was living in a conjugal relationship outside marriage immediately before his or her death, if the deceased and the other person,

"(A) had cohabited for at least one year,

"(B) were together the parents of a child, or

"(C) had together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Motion agreed to.

Section 8, as amended, agreed to.

Mr. Chairman: This may be a little difficult to keep up, because we are moving around to the different sections fairly rapidly.

On section 13:

Mr. Chairman: I now am going to call subsection 13(1), a government amendment. It has not been moved yet.

Mr. Warner: Is this an amendment to the Election Act?

Clerk of the Committee: Yes.

5:10 p.m.

Mr. Chairman: Ms. Hart moves that subsection 22(3) of the Election Act, 1984, as set out in subsection 13(1) of the bill, be deleted and the following substituted therefor:

"(3) In this section, 'spouse' means a person of the opposite sex,

"(a) to whom the person is married; or

"(b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,

"(i) have cohabited for at least one year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Motion agreed to.

Section 13, as amended, agreed to.

Mr. Chairman: We now have section 13a, which is in addition to section 13, with respect to the Employment Standards Act.

Ms. Hart moves that the bill be amended by adding thereto the following new section:

"13a(1) Section 24 of the Employment Standards Act, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed.

"(2) Any authorization granted by the director of employment under section 24 of the said act before the coming into force of this act is nullified."

There is an explanatory note with respect to this amendment. If you are having difficulty finding the page, it means that section 24 gives the director of employment standards the authority, with the consent of a handicapped person, to authorize the employment of the handicapped person at a wage lower than the minimum wage. That would be in workshops and that kind of thing.

Mr. Warner: We are going to carry the section. It seems this inequity has been around for a long time. It is a delight to see that this section gets rid of that odious practice.

Mr. Callahan: It has been around as long as you have.

Motion agreed to.

Mr. Warner: The enthusiasm should be noted.

Mr. Chairman: As you know, we have a problem in relation to the same group of individuals regarding occupational health and safety standards. The

subject will not be discussed now. I just want to plant the seed for another time because I happen to have some--

Ms. Gigantes: What do you mean, Mr. Chairman? I have an amendment and the government has one. It has been passed already.

Mr. Chairman: I happen to have some sympathy for that.

Mr. Warner: Since we are in the habit of doing good things today.

On section 14:

Mr. Chairman: Ms. Hart moves that subsection 14(1) of the bill be deleted and the following substituted therefor:

"14(1) Section 1 of the Execution Act, being chapter 146 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

"(c) 'spouse' means a person of the opposite sex to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

"(d) 'surviving spouse' means a person who was the person's spouse at the time of his or her death."

Motion agreed to.

Section 14, as amended, agreed to.

Mr. Callahan: When we were talking about pension rights, a question was raised as to who was entitled in the case of a person still married to a woman and living in a common law relationship. At that time, someone spoke to us of the difficulties that might arise in circumstances where there were property interests, whether pension rights or real property rights. Is that not a difficulty under the Execution Act?

Mr. Ewart: It could be, but it is a matter the court would resolve. At this point we are just letting it stand.

Mr. Callahan: The fact that it would have to go before a tribunal to decide is the distinction we are applying.

Mr. Warner: Did we not address that in the Family Law Act?

Mr. Callahan: That was the practice we used in the Family Law Act, but where a tribunal was going to rule on it the issue of fact would be left to the tribunal, whereas if it were something that would not normally go before a tribunal, we would not want to interfere in or get into that problem.

Ms. Gigantes: In consultation with wise people, I realize that I made a mistake when we dealt with the question of "informal" and "voluntary." I moved a section that dealt with the question as it pertained to children. That was the one with administrative problems. Would the committee be willing to take a look at the other two amendments as they relate to adult patients and deal with them? Would the government position on that be different?

Mr. Chairman: At this point, that would effectively require reopening the question.

Ms. Gigantes: We just made an assumption that they were all the same. I was quite mistaken in that.

Mr. Callahan: Let us get back to Mr. Warner.

Mr. Chairman: Mr. Warner has always shown a great deal of pragmatism and flexibility in these matters and I am sure the same judgement will come to the fore in this instance.

Mr. Warner: The three amendments placed dealt with two entirely different subject matters and only one of the amendments was heard. It would have been proper to have heard the other two. To do so, we need to reopen section 31, which is entirely in order.

Mr. Chairman: Without making a judgement as to the content of the amendment, the chair is sympathetic to Ms. Gigantes. I believe she is completely accurate in suggesting that we addressed our attention only to--

Ms. Gigantes: Section 8.

Mr. Chairman: --young people at that time and the impact that the change in wording would have with respect to those individuals.

Mr. Warner: That is correct.

Mr. Chairman: Is it understood that we are opening the section? Let us not debate it. If anyone is in opposition to reopening the section, we have a problem. Okay. Let us go ahead with Ms. Gigantes.

On section 31:

Ms. Gigantes: I want to ask Mr. Ward whether his objection to section 8 was a limited one and whether amendments to sections 13 and 14 would be objectionable to the government.

Mr. Ward: I have to get up to speed here rather quickly, but as I understand it--

Ms. Gigantes: These are the adult patients as opposed to patients who are children.

Mr. Ward: That is the change from an involuntary to--

Ms. Gigantes: From informal to voluntary.

Mr. Ward: We support that limited amendment.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 13 of the said act is amended by striking out 'informal' in the second line and inserting in lieu thereof 'voluntary.'"

Ms. Gigantes: That section addresses adult patients; at least, nonchild patients.

Mr. Ward: As I have already indicated, we support that limited amendment.

Mr. Warner: Call the question.

Mr. Chairman: Is there further comment, Mr. Callahan?

Mr. Callahan: I do not want to be a rebel without a cause, but--

Mr. Chairman: Grab hold of a cause. We are interested in seeing your efforts.

Mr. Callahan: Where does it say that it refers to adult patients?

Ms. Gigantes: It does not, but there is a section that deals with children and everybody else is an adult. In the context of the sections that deal with children, which we have just addressed, the government was not happy with the change, for the reasons you advanced.

Mr. Callahan: It depends on the interpretation of the section.

As I read it, it says, "Subject to subsection 14(5), the attending physician may change the status of an informal patient to that of an involuntary patient" by doing certain things. How does that differentiate between the child and the adult? I would have one heck of a time trying to interpret that if I were a judge.

Ms. Gigantes: I do not think you would any more than you would with the existing section. There, you are talking about the change in status of a patient on the decision of the attending physician. All we are doing is using a different word to describe the patient.

Mr. Callahan: All right. You are changing "informal" to "voluntary."

Ms. Gigantes: That is correct.

Mr. Callahan: Fine.

Ms. Gigantes: Do you have a question?

Mr. Ward: May I ask Mr. Sharpe to comment on the point that has just been raised?

Mr. Chairman: Yes.

5:20 p.m.

Mr. Sharpe: The point is well taken. Regarding the section 13 provision that has just been read, "the attending physician may change the status of an informal patient to that of an involuntary patient," I believe that for the purpose of an amendment you would want to say, "change the status of an informal or a voluntary patient to that of an involuntary patient" so that it would be possible to certify a child. Of course, the term "informal" will be retained for children.

Ms. Gigantes: Fine.

Mr. Sharpe: It is important that this be added to section 13.

Ms. Gigantes: Then the motion should read, "Section 13 of the said act is amended by adding"--I am informed that we already have a section allowing for the certification of a child. That strikes a bell in my memory.

Mr. Callahan: Not for certification of an informal patient. There would be no way--

Ms. Gigantes: We would have no more informal patients who were not children.

Mr. Callahan: Yes, but how would you get a child certified?

Ms. Gigantes: We have a special section that deals with that. Which section was that?

Mr. Callahan: The one that refers to an informal patient.

Ms. Gigantes: Yes, that deals with the certification of a child. We did.

Mr. Callahan: We have three sections that deal with the certification of anybody, but they do not deal with what happens to an informal patient who is a child.

Mr. Warner: That section was passed.

Ms. Gigantes: Subsection 8a(5), "Nothing in this section prevents a physician from completing a certificate of involuntary admission in respect of the child."

Mr. Callahan: Yes, but it does not deal with the child who is an informal patient. You have no way of getting that child certified. Once the child has been declared an informal patient--you have to categorize him as being an informal patient in order to certify him under that section.

Ms. Gigantes: I am quite happy to approach the matter as Mr. Sharpe has suggested. Perhaps we can ask for a little help from counsel.

Mr. Callahan: Just strike out the words "informal or"--

Ms. Gigantes: You do not need to strike out anything then.

The amendment will read, "Section 13 of the said act is amended by adding immediately after the word 'informal' the words 'or voluntary.'"

Mr. Chairman: Are we ready for the amendment?

Ms. Gigantes: Ready.

Mr. Chairman: Mr. Sharpe, do you have any further problems?

Mr. Sharpe: No.

Motion agreed to.

Mr. Chairman: You were quick off the mark on that one, Mr. Warner. Were you expecting a flank attack of some kind? You just wanted to be sure.

Mr. Warner: I was just trying to be of assistance.

Mr. Chairman: There is a second one, I believe, Ms. Gigantes.

Ms. Gigantes: Yes. Before I place it, I want to ask Mr. Sharpe whether the proposed amendment as I have circulated it will meet the needs of the ministry or whether we have to deal again with a double entendre, a double designation.

Mr. Sharpe: As I read the amendment, and perhaps legislative counsel would prefer to provide some clarification, it deals simply with section 14. Wherever section 14 speaks of "informal," I would see a complete analogy to "voluntary." Section 13 is the only section dealing with change of status to involuntary. Section 14 deals with the matter of what the attending physician is to do at the end of finite periods. It is a question of admitting the person under clause 14(1)(b) as a voluntary patient.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 14 of the said act is amended,

"(a) in clause (1)(b), by striking out 'informal' where it appears in the first line and in the sixth line and inserting in lieu thereof in each instance 'voluntary';

"(b) in clause (1)(c), by striking out 'informal' in the 13th line and inserting in lieu thereof 'voluntary';

"(c) in subsection 3, by striking out 'informal' in the sixth line and inserting in lieu thereof 'voluntary';

"(d) in clause (5)(b), by striking out 'informal' in the second line and inserting in lieu thereof 'voluntary';

"(e) in subsection 6, by striking out 'informal' in the second line and inserting in lieu thereof 'voluntary'; and

"(f) in subsection 7, by striking out 'informal' in the second line and inserting in lieu thereof 'voluntary.'"

Mr. Sharpe: I am sorry; I apologize. I have just thought through a scenario that may cause problems, but it can be solved in the same way. It would go something like this:

A 14-year-old is certified using form 1, and taken in for what is now the three-day period of assessment. Following that time, one might want to continue the 14-year-old under this provision, under clause 14(1)(b) of the Mental Health Act, but he would continue as an informal, not voluntary, patient. To have that option available, it would be necessary to retain the word "informal" in clause (b) for the child.

Probably the safest way to do this would be to do what was done with the section 13 provision, and use it as an add-on to the term "informal."

Ms. Gigantes: Are you suggesting that for each clause of my amendment, or simply clause (b)?

Mr. Sharpe: Sorry. We would have to read through each place where it appears to see what the relevance is.

It certainly appears in clause (b). Clause 14(1)(c) deals with the

person--unless he is not suitable for admission as an informal or voluntary patient; again, it would be relevant there. Subsection 14(3) could remain "voluntary" only.

I believe it is only relevant in your clauses (a) and (b).

No, wait. Let us go down to your clause (d), because it contains the same provision as (b). You would need it in your clauses (e) and (f) as well.

Ms. Gigantes: We may as well do it in all of them.

Mr. Sharpe: We may as well do it in all of them.

Ms. Gigantes: I wonder if I could rephrase the amendment.

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be amended by adding thereto the following subsection:

"(00) Section 14 of the said act is amended,

"(a) in clause (1)(b), by adding after the word 'informal' where it appears in the first line and in the sixth line, the words 'or voluntary';

"(b) in clause (1)(c), by adding after the word 'informal' in the thirteenth line the words 'or voluntary';

"(c) in subsection 3, by adding after the word 'informal' in the sixth line the words 'or voluntary';

"(d) in clause (5)(b), by adding after the word 'informal' in the second line the words 'or voluntary';

"(e) in subsection 6, by adding after the word 'informal' in the second line the words 'or voluntary'; and

"(f) in subsection 7, by adding after the word 'informal' in the second line the words 'or voluntary.'"

Mr. Sharpe has a further comment.

Mr. Sharpe: I have one final comment. I promise not to make you read it again.

Ms. Gigantes: I am going to kill you.

Mr. Sharpe: May I ask a question for the sake of clarification? Section 8 of the act is a general provision not dealing specifically with children. I believe subsections 8a and 8b are the provisions dealing with children.

Ms. Gigantes: Yes.

5:30 p.m.

Mr. Sharpe: Has anything been done to section 8? One might want to have the option of "informal" or "voluntary" there. Section 8 is the general admission provision for persons other than involuntary patients.

I believe sections 8a and 8b deal specifically with children. "Informal" is the term retained solely. However, section 8 of the act speaks only of informal patients admitted. I believe you would want to have the optional term "voluntary" added there to be consistent with the rest of the amendments.

Ms. Gigantes: Good. Could we deal with the section 14 amendment now?

Mr. Chairman: Do you want to vote now?

Ms. Gigantes: I am assuming that people understand its intent.

Mr. Callahan: I need some clarification. Where in the bill does it refer to "informal"?

Mr. Sharpe: It is in section 8 of the current act.

Ms. Gigantes: We are on section 14 of the act.

Mr. Callahan: Where does section 14 of the act refer to an informal patient?

Mr. Tucker: Clause 14(1)(b).

Ms. Gigantes: Clauses 14(1)(b) and (c), subsection 3, clause (5)(b) and subsections 6 and 7.

Mr. Callahan: Again, how do you relate that to the intention of the word "informal"?

Ms. Gigantes: Mr. Callahan, were you here when we went through this and decided that we would make it the same as in the previous amendment, or were you out of the room at that point?

Mr. Callahan: I guess I was out of the room.

Ms. Gigantes: Okay. Instead of striking out "informal" and inserting "voluntary," we are inserting the words "or voluntary" after the word "informal" in each case.

Mr. Callahan: So it is changed from the way it is printed.

Ms. Gigantes: That is right.

Mr. Chairman: Yes.

Is everyone ready to vote on the matter now?

I just want to make sure that we have it correctly. Clerk, are you satisfied that you have the changes?

Clerk of the Committee: Are you adding a clause (g), referring to subsection 14(8)?

Mr. Tucker: No.

Mr. Chairman: All right. I will call the amendment now. Shall the amendment carry?

Motion agreed to.

Mr. Chairman: I have to tidy up this section. Is there anything further on this section?

We have amended and voted on section 31. I now have to call a motion on section 31 as further amended, because we reopened a portion of it. If that is clear, I will call that just to tidy it up, and then we will go to the next piece of business.

Shall section 31, as further amended, carry?

Section 31, as amended, agreed to.

Ms. Gigantes: Could I move one further amendment?

Mr. Chairman: Ms. Gigantes moves that section 31 of the bill be further amended by adding thereto, in section 8 of the act, after the word "informal" in the third line, the words "or voluntary."

Mr. Callahan: Are you not going to have to amend the motion that was made about restraint as well?

That referred to "informal" but not to "voluntary." By doing this piecemeal, we are going to find that this statute does not make any sense.

Ms. Gigantes: We have the option of doing it another way.

Mr. Chairman: Mr. Sharpe, do you share those concerns?

Mr. Sharpe: Again, you are quite right, Mr. Callahan. I hope the only other place where this happened is the amendment on restraint that was carried. It is too bad. If there were a way of doing this so that wherever "informal" was used the term "or voluntary" could be added, it would be a very clean way of dealing with the issue.

Mr. Chairman: I think that would satisfy Ms. Gigantes

Ms. Gigantes: Yes, it would have saved a lot of time.

Mr. Chairman: Can I get some help as to the best way to proceed with this? I think I know what we intend to do, but we had some difficulty with the drafting. Do you want to make any comments--

Ms. Gigantes: Why do we not, first of all, deal with the motion on the floor?

Mr. Chairman: I am not denying the fact that you have a motion on the floor. All I am trying to do is simplify the final points in section 31 so that we do not have to amend it further. Let us hear from a drafting standpoint. I am trying to proceed as quickly as you are.

Mr. Tucker: If it is the committee's wish, I can go back over each of the previous motions and simply change them so that wherever we have "informal" it will read "informal or voluntary."

Mr. Callahan: Do not do that. Let us say we pass section 8 now with Ms. Gigantes, and vote on the next item, which does not pass. We will have a

real problem. By not talking about a voluntary patient, that person could be restrained under the act.

Ms. Gigantes: Good.

Mr. Sharpe: Could I say that I believe the only exception to that would be sections 8a and 8b, dealing specifically and only with children, where the term is solely "informal"?

Ms. Gigantes: I will so move after we deal with section 8. We have a motion on the floor. Should I withdraw it?

Mr. Chairman: No, you do not have to do that. If it is understood what we are voting on, I will call the amendment. Shall the amendment carry?

Motion agreed to.

Mr. Chairman: Ms. Gigantes moves that each clause of the amended act containing the word "informal" be amended by adding thereafter the words "or voluntary," except in sections 8a and 8b.

This one had better carry.

Mr. Callahan: You get into more difficulties, because you moved a change to section 62, with respect to the limitation period.

Ms. Gigantes: Yes.

Mr. Callahan: I would think an informal patient is being treated at a facility, even though on a voluntary or informal basis. I am sure the present section 62, even though it says six months, would probably refer to that.

Ms. Gigantes: It does not make any reference to any particular type of patient.

Mr. Callahan: But they are still being treated at the facility.

Mr. Sharpe: I do not really see that as a problem, because the language of section 62 deals generally with all the rights of patients regardless of their categories--be it involuntary, voluntary, informal, whatever--and their rights of action against employees and hospitals.

Mr. Callahan: Are we going to have legislative counsel go through the act before we vote on this, or are we going to vote on it now?

Mr. Chairman: If they are satisfied that we can proceed without difficulty, I will call the amendment--

Ms. Gigantes: We will vote on it now.

Mr. Chairman: --it being clearly recognized that sections 8a and 8b deal with children, and are not covered under this amendment. Okay?

All those in favour of the amendment?

Motion agreed to.

Mr. Chairman: Shall section 31, as still further amended, now carry?

Section 31, as amended, agreed to.

Mr. Chairman: There is a new government amendment to section 18, which has been distributed to all members. I will give you a moment to find it.

Ms. Gigantes: I do not have it.

Clerk of the Committee: I gave your copy to David.

Mr. Chairman: Mr. Warner apparently has it.

5:40 p.m.

Ms. Hart moves that subsection 5(1) of the Human Tissue Gift Act, as set out in subsection 18(5) of the bill, be struck out and the following substituted therefor:

"(1) In this section, 'spouse' means a person of the opposite sex,

"(a) to whom the person is married; or

"(b) with whom the person is living or, immediately before the person's death, was living in a conjugal relationship outside marriage, if the two persons,

"(i) have cohabited for at least one year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Mr. Callahan: Is that the section about the donation of eyes, organs and so on?

Mr. Ewart: Yes.

Interjection.

Mr. Ewart: There is going to have to be a judgement made in a hurry.

Mr. Callahan: Let us just hope the donor does not keep them waiting.

Mr. Ewart: The kidneys.

Mr. Chairman: All in favour of the motion?

Motion agreed to.

Clerk of the Committee: This is on section 23, Landlord and Tenant Act.

Ms. Gigantes: Section 23? Is that in the old list?

Mr. Chairman: Yes, with respect to the Landlord and Tenant Act.

Mr. Callahan: Does that also have a number on the top of the page?

Ms. Gigantes: No, it is just the old "spouse" amendment.

Ms. Hart: This is subsection 23(1).

Ms. Gigantes: We probably have it here.

Mr. Chairman: Apparently we have to reopen section 31. The exemption portion of the amendment--namely, sections 8a and 8b--has caused some further complications. There is no difficulty with respect to section 8a. Mr. Sharpe wishes to make some comments on section 8b.

After hearing his comments, if it is the committee's wish I will ask for a motion, to be moved perhaps by Ms. Hart, to withdraw the earlier direction as it related to the exemptions contained in that initial motion on 8a and 8b, which should apply only to 8a.

Ms. Gigantes: Let us go.

Mr. Chairman: We are back to 31, if I have concurrence on that.

Ms. Gigantes: Absolutely.

On section 31:

Mr. Sharpe: I apologize to the committee for this. I did not have the section 8b amendment in front of me, and assumed that both 8a and 8b were strictly children's amendments. Section 8b, which was carried earlier, is a general statement on not restraining or detaining an informal patient.

If one exempted that from the amendment so that "voluntary" were not added to that, one could, by implication, detain and restrain a voluntary patient. That may not have been the intent. Perhaps the motion should be amended to indicate that the only exclusion from "informal" or "voluntary" is 8a.

Mr. Chairman: Ms. Hart moves that section 31 of the bill be amended by deleting the new section referring to sections 8a and 8b and substituting the following therefor:

"(00) Each section of the said act as amended, containing the word 'informal,' be amended by adding immediately thereafter the words 'or voluntary,' except in section 8a."

We all understand what we are voting on. Shall the amendment carry?

Motion agreed to.

Section 31, as amended, agreed to.

Mr. Chairman: What is next? I trust we are done with section 31. We had great difficulty with that.

Mr. D. R. Cooke: There is another mistake in section 31, discovered after we were finished dealing with this, that it be rectified in that we were not informed of it.

Mr. Chairman: That is clear and precise, Mr. Cooke.

Ms. Gigantes: We have hopes of completing this bill. Let us go.

On section 23:

Mr. Chairman: Ms. Hart moves that clause 1(ca) of the Landlord and Tenant Act, as set out in subsection 23(1) of the bill, be struck out and the following substituted therefor:

"(ca) 'spouse' means a person of the opposite sex,

"(i) to whom the person is married, or

"(ii) with whom the person is living in a conjugal relationship outside marriage if the two persons,

"(A) have cohabited for at least one year,

"(B) are together the parents of a child, or

"(C) have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986."

Comments or questions? There being none, shall the motion carry?

Motion agreed to.

Section 23, as amended, agreed to.

On section 25:

Mr. Chairman: Ms. Hart moves that section 25 of the bill be struck out and the following substituted therefor:

"25. Clause 15(a) of the Legal Aid Act, being chapter 233 of the Revised Statutes of Ontario, 1980, is amended by striking out, 'or loss of service of a female in consequence of rape' in the second line."

Shall the motion carry?

Motion agreed to.

Mr. Chairman: Ms. Hart moves that the bill amended by adding thereto the following section:

"26a(1) Subsection 11(6) of the Legislative Assembly Retirement Allowances Act, being chapter 236 of the Revised Statutes of Ontario, 1980, as enacted by Statutes of Ontario, 1984, chapter 17, subsection 1(1), is repealed and the following substituted therefor:

"(11) For the purposes of this section, a person who has attained the age of 18 years shall be deemed not to have attained that age if since attaining that age the person has been continuously in full-time attendance at either or both of,

"(a) a secondary school; or

"(b) for five years following secondary school, a post-secondary educational institution that is recognized as such by the Board of Internal Economy.

"(2) Subsection 19(5) of the said act is repealed and the following substituted therefor:

"(5) For the purposes of this section, a person who has attained the age of 18 years shall be deemed not to have attained that age if since attaining that age the person has been continuously in full-time attendance at either or both of,

"(a) a secondary school; or

"(b) for five years following secondary school, a post-secondary educational institution that is recognized as such by the Board of Internal Economy."

Mr. Callahan: He has three years to go, so can he not contribute three years?

Mr. Chairman: Shall the amendment carry? Sorry, were you through? I know you were making an editorial comment.

Mr. Callahan: I was saying this is supposed bring things into line with subsection 15(1) of the charter. One would think we should recognize those who got through in three years and those who might take seven years to get through.

Ms. Gigantes: Yes, bringing them to the age of 25, which is now the current standing. Right?

Mr. Ewart: The committee did pass two other sections, 54a and 58b, after considerable discussion, accomplishing precisely the same thing.

Ms. Gigantes: Yes, we voted against those.

Mr. Chairman: Shall the amendment carry?

Motion agreed to.

5:50 p.m.

Mr. Chairman: We are going to have some problems without the Attorney General (Mr. Scott) here.

Ms. Gigantes: I understand there are amendments from the government related to accommodation of the physically disabled. Are those going to be released to us?

Mr. Chairman: Are you saying we can go to section 17?

Ms. Gigantes: Does the government have amendments?

Mr. Ewart: Yes.

Ms. Gigantes: I wonder whether we could have them.

Mr. Chairman: We have sections 2a and 12 to deal with. They are both rather contentious and we would probably be better served if the Attorney General were here.

Ms. Gigantes: Those are amendments that I am putting. I do not think we need to spend a long time on them. I am prepared to go ahead and hope that we can get through by 6:30 p.m. and report this bill.

Mr. Chairman: That is my wish as well.

Ms. Gigantes: Let us go.

Mr. Chairman: I am not in control of the Attorney General's time. I am only suggesting to you that there have been some concerns expressed to me on the part of the government relative to some of your amendments. I want to be absolutely certain of where we are heading with respect to contentious amendments. It is not your fault the Attorney General is not here, any more than it is our fault Mr. O'Connor is not here.

Ms. Gigantes: Let us not waste time discussing it. Let us do it.

Mr. Chairman: That is my point exactly.

Ms. Gigantes: The amendments are over here. We have not received them yet.

Mr. Chairman: All right. Can we circulate the amendments and see how far we can get?

Ms. Hart is ready to proceed with the government amendments.

Ms. Hart moves that subsections 10(2) and (3) of the Human Rights Code, 1981, as set out in subsection 2 of the government motion to add section 17a to the bill, be struck out and the following substituted therefor:

"(2) The commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, business inconvenience, outside sources of funding, if any, and health and safety requirements, if any.

"(3) The commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship."

Ms. Gigantes moves that the phrase "business inconvenience" in the eighth line of subsection 2 of Ms. Hart's amendment be deleted.

Ms. Gigantes: Unless I can be convinced otherwise by examples the government may be able to provide, it does seem to me any item that might be categorized as a business inconvenience has a price tag associated with it. In other words, if there were to be an accommodation physically within a place of work, there will be a price tag attached to it. If there has to be an accommodation, for example, in a theatre, there will be a price tag attached to it. I think we already have coverage of the considerations the commission or board of inquiry would have to take notice of that would affect business inconvenience. We are dealing with the cost as one of the considerations.

Mr. Warner: Further, subsection 3 uses the term "assessing what is undue hardship." Surely that is a catch-all phrase that does not make necessary putting in the phrase "business inconvenience." It is obvious the commission still has the opportunity to assess what is reasonable and fair without business having a loophole such as seems to be provided in subsection 2.

Ms. Gigantes: There seems to be a kind of double accounting with that phrase. Perhaps Mr. Ewart could give an example of what might be considered business inconvenience that would not be covered by a cost estimate.

Mr. Polsinelli: May I hear the amendment again?

Ms. Gigantes: Yes. It is to delete the term "business inconvenience" after the word "cost" in the eighth line of subsection 2.

Mr. Polsinelli: There was no amendment from Mr. Warner?

Ms. Gigantes: No.

Mr. Ewart: It is always difficult to think of examples in the abstract. The most compelling reason for leaving it the way it is is that the two jurisdictions I am familiar with that have moved on access for the handicapped and that have experience are Saskatchewan and the federal government. Both the Saskatchewan Human Rights Code and the Canadian Human Rights Act use the term "cost or business inconvenience." The federal one is "financial cost or business inconvenience." The jurisdictions that have already taken this step have used that. It is important to note that it is not just business inconvenience that provides the defence; it must be undue hardship considering business inconvenience.

Ms. Gigantes: I understand that, but it does seem to me, in any case that I can imagine, something that will cause an inconvenience to business will have a cost factor associated with it.

Mr. Ewart: It depends how you read the word "cost." It could be read simply to mean the cost of the change, the cost of the modification. That might not be the issue. It might be the fact that the renovation requires a complete rejigging of the store in a way that might inconvenience customers and so on. The final decision is going to be made by a board of inquiry, the courts and so on. I do not see any serious risk of that term being used to create a large loophole.

Ms. Gigantes: I have been informed that the Saskatchewan Human Rights Code, where it refers to business inconvenience in association with accommodation, says "intolerable."

Mr. Ewart: Is that in the act or in the regulations? I have reference to subsection 31(9) of the code and to section 36 of the regulations. Do you know whether that is--

Mr. Warner: In the regulations?

Mr. Ewart: On the notes I have before me it says "cost or business inconvenience" in the act.

Mr. Warner: Further qualified in the regulations by using the term "intolerable."

Mr. Ewart: We will have the power to enact regulations that define it--

Mr. Warner: True, but as you know, every member who has a parliamentary spirit is interested in having it nailed down in the legislation and not leaving it to the regulations.

6 p.m.

Ms. Gigantes: I do not want to see double accounting undertaken here. The tribunal or the commission will be able to look at all the costs, which may be lost opportunity for business for two or three days, an inefficiency cost--heaven knows. However, it is a wide enough term to allow it to be taken by a tribunal or the commission to be all-inclusive. I am sure any business person defending an action would make sure all the costs were presented to the tribunal or commission.

Mr. D. R. Cooke: I wonder whether Ms. Gigantes would be interested in withdrawing her motion and replacing it with the insertion of the word "intolerable," so that it reads, "cost, intolerable business inconvenience," etc.

Ms. Gigantes: I do not see any reason for putting those as two separate items. If something is an intolerable business inconvenience, it is going to create an intolerable cost. The defender of the action will make that case to the commission or tribunal.

Mr. Lane: I am just subbing on this committee, but I understand Mr. O'Connor had some concern about the words "business inconvenience." Unfortunately, he is not here and I have not heard him debate it, but I know he was determined--

Ms. Gigantes: That is correct.

Mr. Polsinelli: As was indicated, it is a little difficult at this point to try to identify exactly what "business inconvenience" means. When I begin tapping the limited resources above my neck, I think of a situation where, for example, a small store provides wheelchair access. The layout of the store is such that it would completely destroy the displays and not allow the merchant to exhibit the items on sale.

Mr. D. R. Cooke: It is not a cost factor.

Mr. Polsinelli: No, but it would be a business inconvenience. It could prohibit the merchant from conducting his business. That is the type of situation I would envision under that definition.

I am sure if we left it to the resources of other people who have a more vivid imagination than I do, they could probably come up with similar situations. In those cases, business inconvenience is not really a cost factor, but would create situations where people would effectively be put out of business.

Ms. Gigantes: The situation you described would obviously generate a cost factor. I cannot imagine that the defender of an action would not make precisely that point.

Mr. Polsinelli: Not necessarily, because if we are looking at a situation where the merchant has--

Ms. Gigantes: If you are going to go out of business, you have obviously had a cost factor imposed on you.

Mr. Polsinelli: I am suggesting, for example, a merchant with a small retail facility of 300 or 400 square feet, such as many of the craft shops, where he has to accommodate--

Ms. Gigantes: Is that not going to create a cost?

Mr. Polsinelli: It would create a cost in the sense that he would have to go from 300 to 600 square feet. Perhaps the business cannot generate that type of expense and the space is not available at that location.

Ms. Gigantes: I would leave in "cost," and would assume that a rational tribunal--which I assume would be dealing with such actions--would look at cost as opportunity lost; as a cost to the business as a whole.

Mr. Polsinelli: In other words, you are defining business inconvenience as being a factor of cost. If so, you can have no objection to the term "cost" being further defined by the term "business inconvenience."

Ms. Gigantes: No. I do not want to see double accounting. That is my concern.

In other words, I do not think the defender of an action should be able to come before a tribunal and argue, on the one hand, that the cost of accommodation is going to be so many hundred dollars, and also argue that there is going to be a separate item called "business inconvenience." I think we can count all that once under the item "cost."

I feel fully confident that the kind of tribunals your government will see to the appointment of will exercise that kind of wise judgement.

Mr. Chairman: Mr. O'Connor's amendment comes at this question in a somewhat different way. I do not know if you wanted to read it for him, Mr. Lane, or--

Mr. Lane: We have a motion on the floor at this time.

Mr. Chairman: We do. I am not suggesting that you place the amendment, only that you add some fuel to the flames we have already generated here. Perhaps Mr. O'Connor's amendment may be of some interest to the others. We are all struggling with the same intent.

Mr. Lane: If Mr. O'Connor were here, he would want to debate this and then perhaps move it. I will read it. It says:

"I move that section 17a of the bill be amended by adding thereto the following subsections:

"9a(1). Where a right under part I is infringed and the party complained against can achieve compliance with the act without undue hardship, the party shall do what is necessary to achieve compliance with the act.

"(2) In determining whether a party can achieve compliance with the act without undue hardship, the commission or a board of inquiry shall consider any standards prescribed by the regulations for assessing hardship caused by the party complained against and to the complainant."

That is his motion.

Ms. Gigantes: It is the same.

Mr. Callahan: Yes, it is.

Mr. Warner: He is relying on the phrase "undue hardship." With respect, subsection 17a(3) of the government motion talks about undue hardship. I think, for example, that the situation raised by Mr. Polsinelli could arguably be described as undue hardship.

Thus, I am not sure why it is necessary to include "business inconvenience," which I noticed was not referred to in Mr. O'Connor's amendment. He is coming at the same issue from approximately the same direction that we are, and he is suggesting that the test be one of undue hardship. I think that is fair and reasonable.

It would seem that we almost have a consensus. The government motion has mentioned undue hardship; so has Mr. O'Connor and so have we. It may make sense then to remove that little phrase, "business inconvenience," and we can all be happy.

Mr. Chairman: Mr. Cooke suggested that the possible insertion of the word "intolerable" might serve some purpose in this respect. I think we are all working towards the same end. It is a question of how we can put it into clear and understandable language.

Mr. Polsinelli: I merely want to indicate that while Mr. O'Connor's amendment is well intentioned, it would preclude the type of situation where outside sources of funding are available, and the person is unwilling to take advantage of them; that is, the renovations would require the--

Ms. Gigantes: That is fine. I am very supportive of the government approach on this. All we are suggesting is that the approach Mr. O'Connor has taken is in accord with the amendment. It reduces the number of specifically mentioned items to be considered and leaves the assessment of undue hardship to the commission, board of inquiry or court.

Mr. Polsinelli: All I am suggesting is that Mr. O'Connor's amendment is basically taking the government motion and terminating it after the term "undue hardship." The government amendment goes further and says that even if there is undue hardship in a particular situation, but there are outside sources of funding available, the individual would have to take advantage of them.

Ms. Gigantes: That is why we put this amendment forward.

6:10 p.m.

Mr. Polsinelli: I believe we are prepared to accept the deletion of the term "business inconvenience."

Mr. Callahan: I just wanted a further clarification. It is my understanding from Mr. O'Connor's amendment that subsection 17a(3) is broader than in the act. I thought it referred to the hardship of the person required to make the changes, as well as the person requiring them.

Am I mistaken in that regard? Maybe Mr. Lane could read that part so I can mull it over in my mind.

Ms. Gigantes: Why do you not give him a copy, Mr. Lane?

Mr. Lane: It is just 9a(1) and (2). I believe you are referring to the bottom of subsection 2.

Ms. Gigantes: Are we going to finish, Mr. Chairman?

Mr. Chairman: I cannot promise that.

Mr. Callahan: Under 9a(2), Mr. O'Connor's amendment states, "shall consider any standards prescribed by the regulations for assessing hardship caused by the party complained against and to the complainant. It is a double standard, whereas the government amendment, under 17a(3) is--

Ms. Gigantes: We are not debating Mr. O'Connor's amendment.

Mr. Callahan: Why did we read it then?

Ms. Gigantes: As a point of information.

Mr. Chairman: To offer the committee another route by which we may be able to solve the current dilemma we are in.

Are committee members ready to call the question? Shall the amendment carry?

Amendment negatived.

Mr. Chairman: Shall the motion now carry?

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 17a of the bill, as set out in the government motion, be amended by adding the following subsection thereto:

"3a. Section 16 of the said act is amended by adding thereto the following subsections:

"(1a) The commission, a board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, business inconvenience, outside sources of funding, if any, and health and safety requirements, if any.

"(1b) The commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship."

Motion agreed to.

Mr. Chairman: Ms. Hart moves that section 17a of the bill, as set out in the government motion, be amended by adding thereto the following subsection:

"(7a) Section 23 of the said act is amended by adding thereto the following subsections:

"(2) The commission, a board of inquiry or a court shall not find that a

qualification under subsection (1b) is reasonable and bona fide unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances, considering the cost, business inconvenience, outside sources of funding, if any, and health and safety requirements, if any.

"(3) The commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship."

Motion agreed to.

Mr. Chairman: Ms. Hart moves that clause 47(a) of the Human Rights Code, 1981, as set out in subsection 17a(9) of the bill, be struck out and the following substituted therefor:

"(a) prescribing standards for assessing what is undue hardship for the purposes of section 10, 16 or 23."

Ms. Gigantes: Can we get a commitment from the government that when we are looking at these standards, there be consultation with representatives of handicapped groups as well as others?

Mr. Chairman: We do not have the minister here to undertake that.

Ms. Gigantes: We have four members of the government party.

Mr. Chairman: Does anyone want to go on record as having officially responded to Ms. Gigantes's question?

Ms. Hart: I will be happy to do that.

Mr. Polsinelli: You are asking for an undertaking. What do you mean by that?

Ms. Gigantes: For a consultation with the handicapped.

Mr. Callahan: I will give you my assurance, Ms. Gigantes.

Mr. Chairman: Let the record show that we have the assurances of Ms. Hart, Mr. Polsinelli and Mr. Callahan.

Mr. D. R. Cooke: I presume that is always done; no problem.

Mr. Polsinelli: As the parliamentary assistant to the Minister of Labour (Mr. Wrye), under whose responsibility the Human Rights Code falls, I give you my assurance that there will be wide consultation prior to developing the guidelines.

Motion agreed to.

Ms. Hart: I have two more amendments.

Mr. Chairman: Shall Ms. Hart's motion dealing with section 17a, as amended, carry? The original motion was placed on May 6.

Motion agreed to.

Ms. Gigantes: We had adjourned debate on a motion I had put to amend

the Building Code Act. As a result of the very wise direction from the Attorney General in discussion of that original motion, I asked legislative counsel to look at a new motion that would ease the Attorney General's objections to the original motion.

I would like to withdraw the original motion and read the current version.

Mr. Chairman: Okay, section 2a. Ms. Gigantes has requested an opportunity to withdraw the earlier motion and place the new motion.

Mr. Polsinelli: Do we have copies of the motion?

Ms. Gigantes: They have been circulated. It is in a small package that started with amendments of mine dealing with the Human Rights Code and sections related to accommodation of the handicapped. There are two pages on the Human Rights Code; the two subsequent pages are the new motion on the Building Code Act.

Mr. Chairman: Ms. Gigantes moves that the bill be amended by adding thereto the following section:

"2a. Section 19 of the Building Code Act, being chapter 51 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections:

"(3) A regulation made under clause (1)(o) shall not provide an exemption from any requirement with respect to,

"(a) access by handicapped persons to new buildings or to existing buildings to which extensions or material alterations are made; or

"(b) amenities for handicapped persons in any building described in clause (a).

"(4) Subsection 3 applies only to,

"(a) buildings to which the public normally has access to obtain services, for recreational purposes or places of work; and

"(b) the common areas of rental residential buildings containing more than six rental units.

"(5) For the purposes of subsection 4,

"'common areas' means the areas of a rental residential building to which all the tenants of the building normally have access;

"'rental unit' means a self-contained living accommodation used or intended for use as rented residential premises."

6:20 p.m.

Ms. Gigantes: You will recall that the Attorney General was concerned about the first amendment because it was not limited, in his view, to what we would normally call public buildings--places where the public normally goes "to obtain services, for recreational purposes or as places of work." He was also concerned that when he renovated his farm house, he might have to install a ramp.

I believe that with the help of legislative counsel, I have managed to reformulate the amendment so that it clearly applies only to buildings to which the public normally has access and to those areas of residential buildings with more than six units normally used by the public.

On that last item, I would like to mention--I believe, for the second time--the plight of one of my long-time acquaintances. In the last two years, she has had a leg amputated and is in a wheelchair. She lives in private rental accommodation quite happily, and is quite able to manage her life in an unrenovated apartment.

However, when she calls on the services of OC Transpo to move around town, she cannot get in and out of the building without help. She cannot reach the elevator button. She cannot open the front door. These are not major cost items, but they are a major barrier to her ability to live in private rental accommodation.

Mr. Chairman: May I ask a question, Ms. Gigantes? In this instance, how many units are in the building? Is it a large one?

Ms. Gigantes: There would be more than 100.

Mr. Chairman: So it would be more than six units.

Ms. Gigantes: Oh, yes.

Mr. D. R. Cooke: Is this basically your old amendment, plus subsection 19(4)? Is that what you have done to your old amendment?

Mr. Chairman: As I understand it, Mr. Cooke, the earlier amendment by Ms. Gigantes covered literally everything, including single-family dwellings.

Mr. D. R. Cooke: But it was basically subsection 3, and now she has added subsection 4. Is that correct?

Ms. Gigantes: That is right. It modifies subsection 3, but does not mean that every building which may be affected by subsection 3 has to be immediately renovated. If the building were being built today or were being renovated in a material way, this would apply.

Mr. D. R. Cooke: Have you discussed this amendment with the Attorney General?

Ms. Gigantes: No. This amendment is as a result of the discussion we had here in committee.

Mr. Chairman: We have a representative from the Ministry of Housing who can perhaps speak to the proposed amendment.

Mr. Ewart: Mr. Chairman, Mr. Allan Larden is here from the Ministry of Housing. He could address the committee, if that would be agreeable.

MINISTRY OF HOUSING--ONTARIO BUILDINGS BRANCH

Mr. Larden: The Ministry of Housing would rather not see this amendment go through at this time for several reasons. In a broader sense, the building code is being totally revised. Attending that process has been

consultation with the task group, which was formed at the invitation of the government, to completely review building code matters pertinent to the handicapped, as well as a broader base of matters pertaining to the design of the building environment.

A great many of the task group recommendations have been incorporated into the building code in terms of its proposed draft. We are committed to examining the outstanding recommendations over a year or two for purposes of coming up with an appropriate way of getting those recommendations into the code if possible and, if not, having those matters addressed under other pertinent legislation.

Beyond that, the proposed amendment to the Building Code Act may complicate a variety of building projects. Subsection 3 refers to "an exemption from any requirement," which cannot be provided with respect to access.

The building code has inherent in it variable requirements for different types of buildings. This wording could be held to mean that you could not have variable requirements with respect to the handicapped for different types of buildings

There is also a reference in clause 19(3)(a) to "existing buildings to which extensions or material alterations are made." We consider a material alteration to be something as small or insignificant as cutting through a door in a bearing wall. We have had difficulties restraining the enthusiasm of some officials in retrospectively applying requirements for new buildings throughout the entirety of a building when any change as small as a hole in a bearing wall was made.

If someone in a large, multisuite building wanted to knock out the bearing wall between two offices to make a conference room, that material alteration, under some interpretations that have been made, could then engender changes throughout the building--other tenants' suites, public areas and so on--just because that one material alteration was made.

Ms. Gigantes: In a residential building?

Mr. Callahan: Even if they put a roof on, they have to.

Mr. Larden: As we have read this, it could apply to buildings under clauses (4)(a) or (b).

The code, as it is drafted now, requires very detailed, substantial changes in terms of accessibility for the disabled for buildings that exceed 600 square metres in building area, or three storeys in height. These are all professionally-designed buildings.

The changes will ensure access to apartment suites, in virtually very close to 100 per cent of the apartment buildings of that size that are built. It is only the very small ones, which do not require professional design, about which there is some question.

The draft does not require accessibility to those at present. That is an outstanding issue and we are committed to looking at it. Some of our staff people have initiated "work" committees in that respect right now.

Ms. Gigantes: Would those changes apply to major renovations to those buildings?

Mr. Larden: Under our understanding of the Building Code Act, when an owner wishes to change or renovate his building, the code applies only to the change being contemplated.

If someone wants to take out a wall and replace it with a beam, the code will apply only to that. If someone puts an addition on the building, the code applies only to the addition and not, retrospectively, to the existing building fabric. If there was no entrance to be built into the addition, people would gain access to the addition from the existing portion, and the code would not affect the entrance.

Ms. Gigantes: That is of great concern to me. In other legislation, we already have a definition of "major renovation." We use that term in protecting tenancy in the rent review legislation. I cannot see why a similar kind of clause should not exist here, and a similar kind of onus be put, in a case where major renovations are being contemplated.

I suspect this motion will not pass. Rather than putting the committee through a long process of argumentation, I am willing to take the vote now, and express my very strong views that the modified code should make provisions for alterations in the case of major renovations.

Mr. Polsinelli: Prior to taking the vote, I would like to point something out. Your amendment, Ms. Gigantes, would require that if an existing building has any extension or material alteration made, it effectively means the whole building has to provide access to the handicapped. That is what your amendment would do.

Ms. Gigantes: No, only the public portions.

Mr. Polsinelli: I am sorry.

Ms. Gigantes: Only hallways.

Mr. Polsinelli: Every hallway is a public portion.

Ms. Gigantes: Hallways do not normally provide any barriers.

Mr. Polsinelli: All I am suggesting is that if this amendment were to pass, the complete building would have to be retrofitted to provide access to the handicapped.

6:30 p.m.

Ms. Gigantes: How do we make an apartment building owner lower a doorknob or an elevator button? That is a major problem. We do not have housing for handicapped people, and if we expect them to be living in private accommodation, we had better lay out some rules about how they are going to use that private accommodation, or they will have no place to live.

Mr. Polsinelli: I am not suggesting that your motives are inappropriate, improper or not well-meant.

Ms. Gigantes: Find a way, then.

Mr. Polsinelli: I agree with your motives. However, the cost implications of this amendment can be phenomenal. Let us take the vote.

Ms. Gigantes: I have conceded this will not pass, Mr. Chairman. I am saying there should be a real obligation on the part of this government to find a way of dealing with access by handicapped people to living accommodation--in particular, where simple retrofits are going to provide accessibility.

Mr. Chairman: All right. I will call for the amendment now. Shall the amendment proposed by Ms. Gigantes carry? All those opposed?

Motion negatived.

Mr. Chairman: Ms. Gigantes moves that section 12 of the bill be amended by adding thereto the following subsection:

"(00) Section 8 of the Education Act, being chapter 129 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections:

"(2a) A committee that makes and reviews placements of exceptional people shall, in determining the appropriateness of a placement, consider the following matters:

"(a) the identified learning abilities and needs of the pupil;

"(b) the justification, if any, for placing the pupil in a school or class that is segregated on the basis of the exceptionalities of its pupils; and

"(c) the wishes of the pupil's parents or guardians."

Ms. Gigantes: Mr. Chairman, the purpose of my motion is to prevent the automatic streaming which now takes place with handicapped pupils, particularly those whom we now call "developmentally handicapped," into segregated programs, and to provide within the Education Act due consideration and the possibility of input by parents or guardians into the placement of handicapped pupils in integrated programs. It is a very simple amendment.

Ms. Hart: I do not think we have had any input from the Ministry of Education on this, and it is more than a simple amendment to me. Since it is 6:30 p.m., perhaps we could--

Ms. Gigantes: Mr. Chairman, it is quite in accord with upcoming amendments to the Education Act, relating to the operations of Bill 82, as we still call it--providing for the availability of programs for all pupils in Ontario.

Mr. Chairman: Any further comments? Shall the amendment carry? All those opposed?

Motion negatived.

Section 12 agreed to.

Mr. Chairman: We have sections 59 and 60 to go. We cannot do them now without the Attorney General being here, can we?

Ms. Gigantes: Sure we can. Let us do them.

On section 59:

Mr. Chairman: Ms. Hart moves that section 59 of the bill be deleted and the following substituted therefor:

"59(1) This act, except subsections 12(2), (3), (4) and (5), subsections 17a(2), (3), (3a), (4), (7a) and (8), subsections 20(1), (2), (3) and (4), subsections 24(2), (3), (4) and (5), section 26a, subsections 35(1a) and (1b), and sections 54a, 58a and 58b, comes into force on the day it receives royal assent.

"(2) Sections 26a, 54a and 58b come into force on January 1, 1987.

"(3) Subsections 12(2), (3), (4) and (5), and subsections 35(1a) and (1b), come into force on July 1, 1988.

"(4) Subsections 17a(2), (3), (3a), (4), (7a) and (8), and subsections 20(1), (2), (3) and (4) come into force on a day to be named by proclamation of the Lieutenant Governor.

"(5) Subsections 24(2), (3), (4) and (5) and section 58a come into force on July 1, 1989."

Translated, means.

Mr. Warner: Sounds good to me.

Mr. Ewart: The basic idea is that the British subject amendment in section 12, the Education Act, which was released last year, carries a three-year transition, so people have notice. The same was done in the various elections acts.

Mr. Warner: Okay.

Mr. Ewart: I will come back to section 17, but first go over the ones that have fixed dates. Section 24 is the Law Society Act. It was not made public until this year, about a month ago. Three years for that takes you to 1989, again giving people three years' notice, to go with the British subject amendment.

The same applies to section 58a, the Surveyors Act. That too was not made public until now.

The three higher education exemptions are timed to come in on January 1, 1987, the projected in-force date for the entire revision to pensions. Section 17 is on proclamation, in order to allow time to get the regulations and consultations through.

Ms. Gigantes: Good.

Mr. Ewart: I did not mention section 35, the Municipal Elections Act. It also gives three years of public notice.

Motion agreed to.

Section 60 agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Before we close off, I would like to say that I truly appreciated the spirit and the very healthy debate that occurred with respect to so many of the items in connection with this bill.

As chairman, it has been a delight for me to have been of some small assistance, but I was most impressed with the input from the members. Many of you are to be congratulated, not only for the work you did in preparation for the committee, but also for some very strong and well-founded arguments you brought forward to the debate.

It has been a very interesting bill. I am sorry we do not have the Attorney General here to close off with us, but I am sure he feels much the same way as I am expressing now.

Mr. Polsinelli: Perhaps, if he were here, he would offer us dinner again.

Mr. Chairman: I am sure he would. Let me thank the members of the committee. I look forward to working on other, less complicated items.

Ms. Gigantes: Thank you, Mr. Chairman.

Mr. Warner: The chairman is to be congratulated.

Mr. Chairman: Did Hansard pick that up, by the way?

Mr. Warner: The chairman, Mr. Andy Brandt.

Mr. Polsinelli: Would you like me to repeat that the chairman did a great job?

Mr. Chairman: Yes. Could you repeat that, please?

Interjection: I put forward a motion of adjournment.

Mr. Chairman: All right.

The committee adjourned at 6:37 p.m.

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Volume 1
Volume 2

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
ORGANIZATION
TUESDAY, JULY 8, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Mellor, L.

Staff:

Ward, E., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, July 8, 1986

The committee met at 3:45 p.m. in room 2.

ORGANIZATION

Mr. Chairman: The reason we have called the meeting this afternoon is to meet briefly with members of the committee to review the steering committee minutes, decisions made by the steering committee, and also to advise you that because of the estimates not being heard Monday or Tuesday of this week, there appear to be not only those changes but also perhaps some other changes with respect to scheduling that occurred after the steering committee report.

Those changes are principally concerned with Bill 105, which appears to have been set back somewhat as to when it is going to be brought before our committee. That is the latest word I have on it, which from Mr. Callahan's edification, as well as Ms. Gigantes and Mr. O'Connor, who were present at the steering committee, may well change some of the decisions that we made at the steering committee.

I felt that since we had this time open to us for a few moments--and I do not intend to keep you too long--we may have to make some adjustments.

The clerk advised me that she has had some additional information that came in at two o'clock this afternoon to which even your chairman is not privy. I want you to know that in the interests of full, total and unequivocal disclosure, I want to share with you all the information that I have, as quickly as I get it, having been advised by the clerk just now.

Mr. D. S. Cooke: Let us see it.

Mr. Chairman: Yes, file that if you like. I would like to give our clerk an opportunity to indicate what changes have been made since two o'clock and to bring us up to date on what is happening with respect to the scheduling of the committee.

Clerk of the Committee: I have just had a call from a ministry person inquiring if we had any agenda set forward regarding Bill 105 yet, as they had heard it would be coming to the committee.

Mr. Callahan: I am sorry, I do not understand--

Mr. O'Connor: Why are we whispering?

Clerk of the Committee: I do not want to be on the record.

Mr. Chairman: But we all have to get on the record; it is a requirement. The clerk now has the opportunity to get on the record.

Clerk of the Committee: I had an inquiry this afternoon at around two o'clock from a ministry person as to the schedule of the committee for Bill 105, as they had heard that the bill would be coming to committee.

Mr. Callahan: Did you tell him or her what we proposed?

Clerk of the Committee: I gave the possible dates for the committee's sitting. It has not been approved by the House leaders.

Mr. Chairman: If you could tell me where this conversation took place I could probably trace down the facts.

Clerk of the Committee: On my telephone.

Mr. Callahan: Give him his raincoat and he is off.

Ms. Gigantes: I had trouble hearing our clerk, she was talking rather gently.

Mr. Chairman: Could I just say for the information of Ms. Gigantes that the reason we called this meeting is there have been some changes since our steering committee. I think you were out of the room when I mentioned this.

3:50 p.m.

Ms. Gigantes: No, I was here.

Mr. Chairman: You were here?

Ms. Gigantes: Yes.

Mr. Chairman: We are meeting to discuss any changes that may occur or be needed as a result of the new information we have. The clerk has advised that it appears Bill 105 may still be coming to us. We do not have anything more definitive than that at the moment.

Mr. Callahan: Could I raise one issue? I know that at the subcommittee meeting Ms. Gigantes suggested that we add what appears to be an appendix to the statement: "The committee expects it will consider widening the coverage of Bill 105 to include all employees in the public sector." I have some difficulty with that and I will tell you why. To send this out to the public--

Mr. Chairman: Could I stop you just for a moment? Mr. Callahan's point is a valid one, in that it was a steering committee decision to add that. I have brought the advertisement before the committee as a result of the discussion I had with the Clerk regarding the specific wording of the ad. I felt that because it may be sensitive that it would be in the best interests of all of us if we had a full committee approval of the wording of the ad.

I recognize that the ad--and Mr. Callahan will certainly address this point shortly--as printed for your information, goes beyond what the present bill calls for. That being the case, I will give Mr. Callahan the floor but I anticipated the question.

Mr. Callahan: The difficulty we have is that it goes beyond the terms of the committee's mandate to consider Bill 105 with reference to public service employees. In addition to that, the wording of it seems to indicate that the committee in total is prepared to support an enlargement under the terms of reference we have. I do not know whether that is the case or not; that may be a question for another day. I would take objection --even though Ms. Gigantes suggested it on a former occasion--to enlarging the last three

lines of paragraph two. We would be falsely misrepresenting to the public that we have a mandate to do that.

Although I recognize that anyone in committee is entitled to amend a bill, we could bring these people forward in that expectation and find they do not get the support they thought they had and we are really wasting their time, so I would move that be struck out of the advertisement.

Mr. Chairman: Mr. Callahan moves deletion of the words starting in quotation marks, "the committee expects" carrying down to the end of the parenthesis which is "eg. municipalities...."

Ms. Gigantes: Perhaps I can move a friendly amendment.

Mr. Chairman: Ms. Gigantes moves that "some committee members expect it will consider widening the coverage."

Mr. Callahan: I am not prepared to accept that amendment.

Mr. Chairman: Maybe the others are.

Mr. Callahan: Fine. It is my motion so--

Mr. Chairman: Your motion is fine. An amendment to your motion is also in order. You are moving that as an amendment?

Ms. Gigantes: I am. The reason for that is I understand Mr. Callahan's belated concern on this matter but I do think it is advisable. For example, the Ontario Hospital Association, which earlier came before us, agreed that it was not told of the possibility of changes that would affect its jurisdiction and operations on an earlier matter. We should indicate to groups such as the Ontario Hospital Association and others that may be concerned about a widening of the coverage of the bill that some committee members do expect that matter will be raised.

Mr. Chairman: We have an amendment and we have an amendment to the motion. Mr. Cooke and then Ms. Hart.

Mr. D. R. Cooke: There is a green paper which is being discussed around the province right now with a view to certain legislation being introduced by the government in the fall to cover the rest of the employees under the jurisdiction of this province, including hospital workers and so forth.

The committee listening to those presentations is hearing from the public. We would be confusing the public to some great degree, in my view, if we said, "We will listen as well because maybe we are going to put some of this into Bill 105." Granted, we have the power to recommend amendments to Bill 105, but that is really not the purpose for which Bill 105 has been sent to us. It has been sent to us to discuss and to deal with in so far as the employees in the public service with whom we are dealing are concerned. To invite the public to come to us would encroach on the mandate of the committee that is dealing with the green paper. I will vote in favour of the motion.

Ms. Hart: I have a number of concerns. My apologies, I would have been better prepared if I had known this was on the agenda; for some reason, I did not. As I understand it, the public sector bill, as it has been drafted, is tailor-made specifically to one or two unions that are covered by the

portion of the public sector the bill covers. To alter that balance means, we are talking about a totally different kind of legislation.

The other thing I understand, and I would like to check out a little further, is that all employees covered by this bill are paid in one manner, and that is the reason this particular group of employees was chosen as the object group for this legislation. If we are going to open it wide open to all hospitals, teachers, boards of education and everybody else, then we are trespassing on exactly what was said before, on these public inquiries that are going to be held over the course of the summer.

It seems to me we have been given a bill, and to go beyond that bill goes further than this committee is entitled to go. We are risking losing the bill altogether. That would really be unfortunate, given that I personally would like to see this bill passed very quickly.

Mr. Chairman: I have a number of speakers: Ms. Gigantes, Mr. Callahan and then Mr. O'Connor.

Ms. Gigantes: It seems to me that Mr. O'Connor was next.

Mr. Chairman: Could I explain?

Ms. Gigantes: Yes.

Mr. Chairman: If you want to give the floor to Mr. O'Connor, I will do that. I was just about to say, the reason I am recognizing Ms. Gigantes, it is the second time that she has spoken, but she put up her hand a second time before I recognized Mr. O'Connor's hand for the first time. I am not trying to ignore your interest in getting on the floor, Mr. O'Connor.

Mr. Callahan: Sure you are. You just want to show you like me.

Ms. Gigantes: We want to have none of that around here. Go ahead, Terry.

Mr. O'Connor: This is just a brief response to Ms. Hart. I do not think we need to get into a discussion of the merits of the bill, the politics of it as to whether we expand it too far, it will go ahead or not. At this point, we are discussing an informational ad to determine how we can best advise the public as to what we are talking about. First, we ran into problems on this committee with respect to Bill 7, and have received criticism that we did not sufficiently advise segments of the public about what we were talking about. I refer specifically to adult-only apartment buildings. I am now being deluged with landlords who say: "We did not know this was here. Why did you not tell us? We wanted our viewpoint made known." Second, on the sexual orientation amendments, the same thing is happening.

What we are trying to do here is draft something which is broad enough to advise the public as to what we are talking about. I would agree, therefore, with Ms. Gigantes's amendment to that sentence or something similar to it. Quite frankly, all we are doing is stating a fact. There will be amendments coming forward from at least one party and perhaps two, to expand or consider expanding coverage of the bill to a broader number of public sector employees employees than the bill anticipates.

That has been made known by both parties to the minister, and the public should know that so it can come before us and address the issue as to whether

that should happen or not. I do not see any problem therefore with a sentence similar to what is there or perhaps the version now suggested by Ms. Gigantes.

4 p.m.

Ms. Gigantes: I appreciate the comments of Mr. O'Connor. The Liberal members may be labouring under a misimpression on this question. First, public hearings are not to be held on the green paper this summer. The public hearings were completed in June. There is a report to be delivered on those public hearings at some point. It may be in the early fall or at some point to be designated, I guess, by the Attorney General (Mr. Scott) in his wisdom.

Mr. Chairman: First full moon.

Ms. Gigantes: Perhaps the first full moon. The public hearings are over. During the course of the public hearings, which were focused on the green paper, the green paper was focused again on what is called the broad public sector and the private sector, the hearing panel heard many submissions, both by people who would be affected by the legislation before us, Bill 105, and those interested in a further bill which the Attorney General has promised for the rest of the 98.5 per cent of the working women of Ontario.

They heard many submission from both those groups which indicated that those groups wanted to have this piece of legislation cover the broad public sector. I will not go into the reasons they made that submission, but Mr. O'Connor has told you, and I am telling you, we agree with them. It seems only reasonable, if we want this legislation, and if we are going to give meaning to public hearings on this legislation, to let the public know--both those opposed and those in support of either the bill or an expanded bill--that we intend considering that matter because, brothers and sisters of the Liberal Party, that is what is going to happen and that is what we are telling you. For you to insist that the public not be told, knowing that is coming, is simply to withhold information from the public. I do not see the purpose of that.

What I have suggested tries to meet Mr. Callahan's concern, which is a justified and supportable concern. That is, the sentence may seem to imply to members of the public that the whole committee now supports that concept. He has made it clear that is not true and so has Ms. Hart. However, it would be negligent on our part not to indicate to the public that we intend to discuss that matter. We can convey a correct impression by saying, "some committee members," or we might even say, "most committee members," but I am happy with "some."

Mr. Callahan: How about "a" committee member?

Ms. Gigantes: No, you have got it wrong. You do not understand.

Interjection.

Ms. Gigantes: Perhaps, if we tell you often enough.

Mr. Chairman: The chair as always, is being entirely neutral in this whole discussion. However, given the opportunity to vote on the issue, I think it would--

Ms. Gigantes: (Inaudible) two unions, by the way, it is five.

Mr. Callahan: To begin with, it seems to me that there is even a point of order. I am a freshman in this House, but it seems to me that if a bill is referred to a committee, you can amend the bill within the framework of the wording, but you cannot amend it in terms of framework of the group it covers. I would suggest that may be exactly what happened. As my friend indicated with Bill 7, things came in by way of amendment which were not necessarily covered within the framework of the bill that was referred by the House to us.

Just from a strict point of order, I would suggest it would be out of order to even consider those other aspects.

Going to my colleague's comments, it is important and it is also important for Ms. Gigantes as she has questioned the Attorney General on numerous occasions about the question of when pay equity for the private sector will come forth. If you bring these other groups forward and by some chance they wind up in the bill, it will probably get back to the House and in clause by clause it will be delayed even further. That will delay the pay equity. I agree with my colleague that these people are paid in a different fashion.

The group that is anticipated by the bill, as currently framed and as referred to this committee, deals with the employees that we pay. It is my understanding that it is to be a model for subsequent bills and to alleviate the concerns of a wide myriad of parties out there--municipalities, school boards and so on. If you get them all fired up, there is no way this bill will be passed within my lifetime, and I expect to live at least another two years.

I suggest it is not only incorrect from an order standpoint, but it is incorrect from an information standpoint. It is not my understanding that we are just going to read the reports from the people who appear before the committee with the green paper. I am sure that is what our intent is, but I can be certain from previous experience on other committees that they are going to come forward and are going to want at least to read into the record that report, and perhaps an update of their report, and we are going to get into very extensive hearings.

I do not know what the effort is on the part of Ms. Gigantes or of those from whom I am getting the vibes that they may support that change in the advertisement, but I do not believe it will assist anyone. I do not believe it will carry out the mandate this committee has. I expect all it will do is create massive delay in terms of getting this very important bill passed by the House and then moving on to the next category of people.

I am speaking in favour of my amendment that this be extracted from the notification. I even suggest that if we send out a notification such as this--and I do not want to sound legalistic--we may very well find that we have spent moneys allocated from the Legislature on a purpose that was not within the framework of our mandate. I suggest that might not be a wise thing to do.

Mr. Chairman: Having been given that word of caution, I will go to Ms. Hart.

Ms. Hart: I will be very brief. On the topic of money, as I understand it, although I am sure the chairman will correct me if I am wrong, amendments may be made to a bill in committee but not amendments that require the government to spend more money. My understanding of these amendments is

that the government would be required to spend more money and, for that reason, in my submission they would be out of order.

Furthermore, in answer to Mr. O'Connor's comments, this is not like Bill 7, because we know there is a bill coming. It will follow the regular procedure, and there will presumably be public hearings when that bill is introduced, I understand early in the fall. It is not as if it is like Bill 7, and it is a fait accompli. We know there is going to be some public forum in the very near future.

Mr. D. R. Cooke: Call the question.

Mr. Chairman: I think there may be other speakers on this. Ms. Gigantes has indicated an interest in speaking. Is there anyone further who wishes to comment on this matter? Mr. Polsinelli wishes to speak.

Mr. Polsinelli: It is only polite for us to wait for Ms. Gigantes to come back so that we can hear her further comments and also see her role in it. I would like to ask you a procedural question, sir, as the learned chairman that you are, whether it is appropriate for the committee to do two things. One is to send out an advertisement, giving a clear indication that the committee has made up its mind on a certain matter prior to the matter being referred to it and that matter not being within the ambit of the bill. That was item 1.

Mr. Chairman: May I address that one while you are thinking?

Mr. Polsinelli: Why do not address that one while I am thinking about it. I know I had two of them.

4:10 p.m.

Mr. Chairman: You have another question, but the wording of this ad was determined at the steering committee meeting made up of Mr. Callahan, Ms. Gigantes and Mr. O'Connor. The chairman, whom you so kindly addressed in your opening remarks, had some concerns about the wording of the ad and, as a result, brought it before the entire committee for ratification. I did not want to let the ad go because I share some of your concerns. My parliamentary experience may be just a few years longer than yours, but not that much longer. I had the same misgivings and apprehensions that have been discussed at our meeting today and I felt it was in the best interest of the committee to know exactly what went into the ad before we ran it.

Mr. Polsinelli: I hate to interrupt. I know you like to be very descriptive, precise and thorough in your responses.

Mr. Chairman: Exactly, but it is necessary.

Mr. Polsinelli: On the same point, if I were to raise that as a point of order, perhaps you as chairman could make a ruling on whether it is appropriate for this committee to advertise something that is (a) not within the bill and (b) an item that effectively gives the impression of having prejudged the issue.

Mr. Chairman: If I were to make a ruling on it, I would have to say the advertisement goes well beyond the scope of the bill and, therefore, could conceivably be misleading. I say that because the chairman cannot anticipate what is going to happen at the hearings or what amendments will be brought forth.

I understand, as you understand, that Ms. Gigantes and her party as well as Mr. O'Connor and his party may well look for an expansion of this bill. I am not so naïve that I have not heard the rumours in the hallway. However, having heard those rumours, I cannot make that kind of anticipatory decision. My ruling would be that the amendment is out of order. However, I would rather the committee make that decision so that we could share the fault and blame.

Mr. Polsinelli: I would like to make one further point. Since we are in the unlikely situation of having a majority in this committee, I think it is always better to look at a situation and compromise, rather than take an antagonistic approach. Perhaps Ms. Gigantes would be happy with a compromise dealing with the powers of the committee, rather than the specific decisions the committee may make.

Mr. Callahan: I hate to interrupt my colleague--

Ms. Gigantes: He may wish to add a few further comments. It sounds very tempting.

Mr. Chairman: I guess we are getting close to the vote.

Ms. Gigantes: I asked Mr. Polsinelli to please elaborate because he is tempting me with his compromise.

Mr. Polsinelli: I understand my colleague's motion, which is on the floor and this is not in contradiction to that motion, but rather in substitution. Rather than indicating what the committee expects it will do, or what some members of the committee believe they intend to do, the phrase could read, "It should further be noted that the committee has within its mandate the power to expand, restrict the bill--"

Mr. Callahan: It does not.

Mr. Polsinelli: I mean to amend the bill, expand, restrict, whatever. I am sure the clerk, in conjunction with our chairman and the steering committee, could reach a reasonable phraseology that would indicate the powers of the committee without indicating what some members of the committee may intend to do.

Ms. Gigantes: On that basis, I would be glad to withdraw my first subamendment, but I am not sure what your judgement would be whether the subamendment I would like to propose would be a subamendment or a new amendment. I would like to propose a subamendment that would make the sentence read, "The committee has the power to amend the bill to widen the coverage."

Mr. Callahan: I raise the same point of order as my colleague. We have the authority to amend the bill but not to increase the cost of that bill. We have no authority to do that, no power whatsoever. I submit that any suggestion of that type would be totally out of order. I ask the chair to rule on that.

Mr. Chairman: I suggest that the committee does have the power to do that, but the government does not have the requirement to act on that submission and/or recommendation by the committee. Obviously, the government has to put the bill through the House and has to get the support of the House to do it, but if the government feels in its wisdom that the committee has gone well beyond its scope, that is for the government to determine. I do not think it is inappropriate for those amendments to come forward.

Mr. Polsinelli: On that same point, I would also be very concerned about the phrase that is presented by Ms. Gigantes in the sense that it may lead to the misapprehension that we could conceivably widen the coverage to include the private sector. I would hate that message to go out because of the flood of submissions might come in dealing with that aspect and that misapprehension. The bill does not deal with it, but if you say that the committee has the power to widen the coverage, it may imply that it has private sector coverage. If Ms. Gigantes would agree, we could include a phrase that says the committee has the power to amend the bill, which is strictly within the procedural framework of this committee. It sends out no messages one way or the other and does not say anything.

Mr. Callahan: I would be prepared to support that, but in fairness to my colleague, who perhaps got here after some of us had spoken, the original appendix 2 said the committee expects it will consider widening the coverage of Bill 105 to include all employees in the public sector, i.e., municipalities, school boards and so on. The statement was made, and I think it is legitimate, that these bodies are not within the control of the government of Ontario. We pay our employees here. To broaden the scope, as I suggested earlier, could very well result in the delay of this bill, in view of the fact we would have all of these people coming here to put representations forward that may very well just be wasting their time at this point, may very well delay this bill by way of clause-by-clause discussion in the House, and thereby delay the implementation of further bills that would deal with the private sector and with these other types of employees.

Those comments were made, and I think they were ones that should give Ms. Gigantes some concern. On a number of occasions, she has asked the Attorney General (Mr. Scott) when the pay equity bill for the private sector would be introduced. I have no difficulty with my colleague's suggestion, although that is probably a third amendment. Perhaps we should be dealing with clearing off some of those amendments.

Mr. Chairman: Forgive me for interrupting, but I am sure you recognize there is some active negotiating going on. I think that is a healthy, democratic process. While that negotiating is going on, I will leave the amendments on the floor and go back to Ms. Gigantes. Perhaps she has a new negotiated position.

4:20 p.m.

Ms. Gigantes: There seems to be a misapprehension that Bill 105, as currently drafted, deals only with people who are paid directly by the Ministry of Government Services, and that ain't true. People in the employ of the Toronto Transit Commission are covered. I think the Liberal members who are really labouring over this section need a bit more understanding. Mr. Callahan needs to understand that we are not talking about people whose cheques come from the Treasurer; we are talking about people who happen to have been thrown into this bill, for one reason or another, who come to a total of 65,000, among whom we will find about 29,000 women and among whom about 24,000 may have the benefit of protection under this bill.

My concern is that the way we have drafted our second paragraph suggests that everything that is not covered by the term "public service" is therefore private. That is a political appellation. It is not normal nomenclature understood by me when I pick up my newspaper and read an advertisement about what is going to happen in this committee or what the bill is about.

I do not consider people who work for hospitals in Ontario to be part of the private sector. I do not think the people who work for hospitals in Ontario consider themselves part of the private sector. When the Conservative Party brings in legislation to restrict the wages of people employed in the public sector, it includes people who work for the hospitals in Ontario. When the Liberal Party supports the Conservative Party in the restraint of those wages, it does so on the basis that these people are in the public sector. Those are terms that a normal person such as myself, sitting reading my newspaper on the weekend trying to figure out what this advertisement is about, is going to understand.

If you talk about the private sector, as we do in the first part of paragraph 2, and the way we do it is an important way to do it, then we are confusing poor people who are trying to figure out what the newspaper advertisement is telling them. We are saying we are not talking about the private sector, but that does not mean we are not talking about the public sector as opposed to the public service. Do you see my problem?

Mr. Chairman: Very clearly. Would it be possible for you to reiterate your amendment so that we have it clear? The die has been cast on this whole issue and we should bring it to a head and dispose of it. I have allowed a number of speakers to speak two and three times. We have pretty well exhausted our information on this issue. Can I have your amendment?

Ms. Gigantes: I am going to go to a slight rewording, if I may, which may please people more.

Mr. Chairman: Are you withdrawing all former amendments? You now have a subamendment which reads as follows:

Ms. Gigantes moves that the committee has the power to propose amendments which would widen the coverage of Bill 105 to the public sector.

That being the subamendment, in fairness to the committee members, I should remind them that the amendment calls for the deletion of the section starting with the words in the second paragraph "the committee expects it will...." and ending at the words "...example, municipalities, etc.," which is approximately three lines. That will be a total deletion.

Mr. Polsinelli: Perhaps we can take that in two parts, one being the deletion and one being the substitution or replacement phrase?

Mr. Chairman: I have to take the subamendment first.

Mr. Polsinelli: I am breaking the subamendment into two parts, one part of the subamendment being deleting that sentence and the second part being the replacement phrase.

Interjections.

Mr. Chairman: That is reasonable. That is the intent of the subamendment in any event. If Ms. Gigantes will agree to that, it may be somewhat tidier. It would call for the deletion of words as proposed in the the Callahan amendment and the addition then of the subamendment as proposed by Ms. Gigantes. If that carries, the amendment will automatically carry. Will you agree to proceeding in that fashion?

Ms. Gigantes: It is highly irregular.

Mr. Chairman: What?

Ms. Gigantes: There has been an amendment.

Mr. Chairman: The amendment has not carried.

Ms. Gigantes: It is on the floor.

Mr. Chairman: That is right.

Ms. Gigantes: My subamendment to that amendment is on the floor. One deals with the subamendment first.

Mr. Chairman: We are dealing with your subamendment first. The only thing we are changing is that we are including in your subamendment the deletion of the wording of the paragraph as proposed by Mr. Callahan. That is to come out if your subamendment carries. It could conceivably occur, although unlikely, that your subamendment would carry and his amendment would not carry,

Ms. Gigantes: Oh, no.

Mr. Chairman: Then the wording would be absolutely improper. That is the point being made by Mr. Polsinelli and he is correct as usual.

Ms. Gigantes: Do you want two votes or one?

Mr. Callahan: I do not want to belabour this, but I suggest you have to take them separately. There cannot possibly be an amendment. It is not amending this; it is substituting an entirely new clause for a clause that is currently there. With respect, I suggest you vote on the deletion first and then we will have an opportunity to address the question, not of an amendment but of a new motion. I understand that you are going to run them both at the same time.

Ms. Gigantes: Mr. Chairman, on a point of order: My subamendment to the amendment is a friendly amendment and is in keeping with the purpose of the amendment. The purpose of the amendment is to make sure that the public does not think that the whole committee expects the coverage of the bill to be widened. To achieve the same goal, my purpose is to clarify the wording so that the public is not under any misapprehension about what we are doing.

Mr. Chairman: Perhaps the clerk will read the amendment.

Clerk of the Committee: Mr. Callahan's amendment was that he moved to delete the words "that the committee expects it will consider widening the coverage of Bill 105 to include all employees of the public sector, e.g. municipalities."

Ms. Gigantes moved an amendment thereto to delete the words I just read and substitute therefor, "that the committee has the power to propose amendments which would widen Bill 105 to the public sector." She is substituting, so it is an addition to the original amendment, deleting all the words there and substituting therefor the wording I just read.

You put the question on the subamendment. If it does not carry, then you can put the question on the main motion.

Mr. Chairman: We will proceed in that fashion. I will call for Ms. Gigantes subamendment.

Motion negatived.

Mr. Chairman: Next is Mr. Callahan's main amendment.

Motion agreed to.

Mr. Chairman: We now understand how the advertisement will be worded. We do not know yet when the advertisement is going to go in the papers.

Clerk of the Committee: After the referral from the House.

Mr. Chairman: I was going to propose that you review the budget next. Ms. Gigantes had her hand up. I want to explain part of this budget, particularly in relation to the travel per diem section, the number of meetings--these are guesstimates--meal allowance and so forth that go to the members of the committee. These areas of the budget are pretty well fixed and there is not much we can do about them.

In the area of accommodation and transportation, we had to anticipate that the committee might at some time decide that in regard to submissions before the committee, it might wish to go to Ottawa, Windsor or somewhere else to hear submissions if there are a lot of them. I cannot make that decision in advance of knowing what the submissions are going to be or what the committee's determination might be.

I am prepared to go before the accounts committee on this matter and argue for the need for transportation, recognizing full well that there may be zero amount for the figures that have been put in for accommodation and transportation. We may well decide not to. If you want to take it out now, recognizing that you have no option if the item comes up later, that is fine with me too. I put it in after discussion with the clerk only because I felt you might wish to make that decision and we might need the money.

4:30-p.m.

Mr. Callahan: There are the briefs submitted through the green paper hearings. There must be a record of where those submissions came from. I am sure we are going to find that some were not from the confines or around this area. It is wise to put it in so that we can accommodate those people in the event they have something to say over and above what they put to the green paper or if they want to appear before us.

Mr. Chairman: At this point, I do not know that we necessarily want to get into the issue of whether we are going to travel based on submissions that are yet to come in. I put it in as a safeguard. If you want to take it out, take it out, but do not come back later and tell me that we do not have any money for transportation, recognizing that we have not budgeted for it.

Ms. Gigantes: I am loathe to put it in. I also do not understand why we have a catering lunch tray and coffee.

Clerk of the Committee: Coffee.

Ms. Gigantes: It is \$1,800 worth of coffee.

Clerk of the Committee: It is \$100 a day for 18 days.

Mr. Callahan: I understand that it is almost as expensive as gasoline these days.

Mr. Chairman: Ms. Gigantes, in case you are not aware of this, we are calculating 18 days. It runs to \$100 a day. It is not just for this committee; it is also for visitors and delegations who come before the committee. That is the cost.

Ms. Gigantes: I wish I had the concession.

Mr. Chairman: It loses money. That is the frightening part of it. Let us not get into that, but it does lose substantial amounts of money.

Ms. Gigantes: No, let us not. Would it be reasonable for us to set aside some money for the transportation of people who wish to appear if they need money?

Clerk of the Committee: It is in the original budget that was passed before.

Ms. Gigantes: How much do we have there?

Clerk of the Committee: I think it is \$1,500 for expenses of witnesses and \$1,000 for fees of witnesses, so the total is \$2,500.

Ms. Gigantes: We may be dealing with situations where people who are not associated with well-healed organizations ask us for travel money, perhaps not for accommodation but for air flight. A round trip from Ottawa, for example, would set you back \$242. It seems to me reasonable that we should make some allowance within this budget for that kind of situation; it might arise.

Clerk of the Committee: You have approximately \$2,500.

Ms. Gigantes: Some of that is for fees.

Clerk of the Committee: That can be juggled.

Ms. Gigantes: We might still need extra money for that. Is it possible that at a later date we could go back and ask for more?

Clerk of the Committee: No. If you want it in, I would put it in now.

Ms. Gigantes: This committee should decide here and now that it is not going to travel because once the whole option of travel gets opened up it has been my bitter experience that committee members decide they might as well travel. I do not see any good reason for it, particularly in this case when we have finished an enormous round, which I consider to be an unnecessary round, of public consultation around the green paper, much of which dealt with items that are before us now in this bill. I suggest that we look at an item that would provide funding for travel for people who wish to present to us and who we decide we are going to hear, but who do not have the backing of an organization with a lot of money.

Mr. Chairman: Considering that, you are asking for accommodation and transportation to be deleted from the budget.

Ms. Gigantes: Yes.

Ms. Hart: I have a question. It looks like a guesstimate. When we approve a guesstimate amount, such as \$5,000-odd for accommodation, and we decide to travel and it turns out to be \$6,000, what happens then? What I want to know is, if you have put an amount in your budget for accommodation, is that the ceiling?

Mr. Chairman: If we overspent, I would have to go back and explain the expenditure.

Mr. Callahan: Either that or he would have to pay it.

Mr. Chairman: It is always possible to have a budget increased, but they obviously are not enamored with a chairman in that case. You have to argue for what you have in the budget.

Ms. Hart: We had better pick the right number.

Mr. Chairman: It is everybody's best guess at this point. All we try to do--it is primarily the work of the clerk and myself--is to determine what we think it might be, anticipate what the committee might want by way of advertising, accommodation, some travel, all of those things, and put them in the budget. If you do not need it you do not spend it. It is just a number on a page at this point.

Mr. D. R. Cooke: We all know that, too.

Mr. Callahan: I notice there is nothing here for interpreters, although perhaps there is in the other budget. Within this framework, we may require interpreters. Do we have anything?

Mr. Chairman: We have an amount. It is not a large sum; it is \$500.

Mr. Callahan: Are we entitled to move moneys from one item to another or is that verboten?

Clerk of the Committee: If we are over in one area and under in another area, administration will take it from one area and apply it to another area.

Mr. Callahan: Because I can see that interpreters could--

Clerk of the Committee: Interpreters or translators? They are very different.

Mr. Callahan: I thought they were the same.

Clerk of the Committee: No. Interpreters are for people who are handicapped in some way, someone who is hearing impaired, has visual problems or has difficulty speaking. That is an interpreter. Translation is what it says. They are two very different items.

Mr. Callahan: Do we have anything for translation? This is an area where there might be people who speak English badly or have difficulty

understanding big words, such as Ms. Gigantes just used, homogeneous or integral. The most important thing is that these people be able to communicate with us and vice versa.

Mr. D. R. Cooke: If there are words you do not understand, just use this.

Mr. Chairman: I have appeared before the accounts committee in the past with respect to this kind of thing. Mr. Cooke will verify and support what I am about to say. I say that in an anticipatory way; he may disagree completely. The translation services are the toughest to get through.

Mr. D. R. Cooke: That is my understanding.

Mr. Chairman: They have been deleting these left and right. That is the one line in the budget--I think the clerk found that in the last go-around. We can put it in, but it may be difficult to get it through.

Mr. Callahan: We should put something in there. I am relieved to know that we can move amounts around. We might even be able to find out from the committee that heard the green paper presentations whether there were any difficulties in that regard.

Mr. Chairman: Do you want to propose an amount?

Mr. Callahan: I do not know what a translator goes for.

Clerk of the Committee: It is \$450 a day plus sound equipment. It is several hundred dollars a day. There is the sound equipment, an operator and a translator.

Mr. Callahan: I would like the concession on that.

Clerk of the Committee: That is a global figure on the spur of the moment.

Mr. Callahan: We should have at least one day. If we find there are going to be these difficulties, we should try to put together on one day all the briefs that may require translation services. It is absolutely abhorrent that people can come before a committee unable to speak English or French and are denied the opportunity to communicate fully with the committee.

Clerk of the Committee: If you are going to put that in for one day, I suggest you put a global figure of about \$1,000. That gives leeway if you need two translators depending on the length of the day.

Mr. Chairman: I want to get the order correct. I have not taken Ms. Gigantes's amendment yet, which was to delete travel and accommodation.

Ms. Gigantes: I did not complete what I was after so why do we not deal with this one and come back to the other.

Mr. Chairman: Let us deal with the addition of the \$1,000 for translation services.

Ms. Gigantes: If required.

Mr. Chairman: If required; the whole budget is if required.

All those in favour of that addition to the budget? Carried.

4:40 p.m.

Mr. Chairman: Ms. Gigantes moves the deletion of moneys for travel and accommodation by members of this committee outside of Toronto and the addition of an amount of \$3,000, if and as required, for people who are coming to present to this committee here in Toronto.

Do you want to do them both together?

Ms. Gigantes: Sure.

Mr. Chairman: It is your amendment.

Ms. Gigantes: I would like to make it clear that I do not intend it to be used by representatives of large organizations that would normally present without cost. We have dealt with this before in the justice committee. We had one Bill 34 request.

Mr. Callahan: Are you suggesting deletion of an equal amount from transportation and accommodation? I think we are all aware of the recent Board of Internal Economy memorandum that people who are residing here during the hearings are no longer able to charge the--

Clerk of the Committee: That is not what it means.

Mr. Callahan: Is it not?

Mr. Chairman: This is out-of-town accommodation.

Clerk of the Committee: This is for staff of the committee out of Toronto.

Mr. Chairman: If we were to require a hotel in Windsor because we went there for hearings and stayed overnight, we have an amount in there. If we are going to travel, there is the possibility that the travel could involve a late night and possibly an overnight stay. It is there for that reason. Does that clarify your point, Mr. Callahan? It has nothing to do with accommodation here.

Ms. Gigantes: The reason I am suggesting this is that the green paper public hearings were in five centres, four of them outside Toronto. First, if we are going to travel at all, we have to go to all those centres. I do not think we want to travel all the way around this province. Second, the green paper process has gone on. While I would be greatly in favour of travel if it had not, it seems to me to be an unnecessary duplication. I would have much preferred it to have happened by this committee rather than in the way it did. Third, I would like to see us have some flexibility to provide assistance to people who might otherwise not be able to present to this committee.

Mr. O'Connor: I support leaving travel and accommodation allowance in the budget. Perhaps the most practical and the easiest way to make sure we hear from people around the province--easiest for them, that is--is to travel to them. I totally disagree with Ms. Gigantes' suggestion that we somehow limit travel and accommodation expense to those who cannot afford it. Not to

afford the same accommodation to larger groups or however she characterized it would be an administrative nightmare that gets into asking people to submit information on the size of their groups and the budgets they have. Some kind of subjective analysis has to be undergone to determine whether they can afford to come to Toronto, which I do not think is in our mandate at all. In case we deem it necessary to go to Ottawa or Windsor, is it not simpler to provide us with some money? I do not think that amount should be deleted.

Mr. Chairman: The amendment calls for the deletion of accommodation and transportation and the addition of \$3,000 to be given to groups that require assistance in coming to Toronto to make their submissions before this committee. With your approval, I want the clerk to add that the \$3,000 would be used at the discretion of the committee. Then the committee will make the decisions in whatever--

Ms. Gigantes: That is what we have done in the past. There is a precedent for this.

Motion negatived.

Mr. Chairman: Can I now have a motion to approve of the budget as amended, which means the addition of one thing, the \$1,000 that Mr. Callahan moved. That will be the amendment.

Mr. Callahan: I so move.

Motion agreed to.

Mr. Chairman: Is there any other business?

Clerk of the Committee: Yes, the wording of the letter.

Mr. Chairman: The letter you have before you, appendix 1, is a letter that will be going to the groups that we have already identified as having an interest in this subject. This letter will include a copy of the advertisement which we have now agreed to. The reason I wanted to put the advertisement in there is that when we were thinking of the extension, of perhaps widening the scope of the bill somewhat, I thought it would be important to have the advertisement in there. I do not feel quite so strongly about it now, but whatever the case, if you wish to delete the second paragraph, you can do that as well. If you check the wording of the letter and if you agree with it, that will be the letter that will then be sent out to all of the groups that we can--

Clerk of the Committee: There are about 400 on the green paper.

Mr. Chairman: Yes. With that number of groups receiving the letter, I thought it was important that the wording be reviewed by the committee and approved before it goes out.

Ms. Gigantes: In the second part of paragraph 1, we have invited those groups and individuals who have submitted to the green paper consultation to resubmit. In my view, that is totally unnecessary. We can go to the women's directorate and get copies of those submissions. We can get copies of the yards of transcripts of those hearings. We do not have to put them to the trouble of asking for fresh copies. Instead, we might indicate to them that, if they ask us, we will take a look at their previous submission and the transcripts and that if they have anything additional they want to say to us, they can say it to us.

Mr. Chairman: Believe it or not, that is what we were trying to do with that paragraph. If you read it carefully, it says, "As a contributor to the government's Green Paper on Pay Equity, the committee invites you to submit"--not to make a presentation--"a copy of the presentation that you submitted at that time, with any additional data that you might have for its consideration."

Mr. Callahan: Ms. Gigantes is suggesting we get that from another source as opposed to putting them to the trouble of--

Ms. Gigantes: Yes. Some of those briefs are very long. For some of the organizations involved, what we are doing is asking them to copy a document which is available to us. It seems unnecessary.

Mr. Callahan: Do we have anything in the budget we just passed to do that?

Clerk of the Committee: This material is on file with the women's directorate. If you word it so that they, as a contributor, indicate to us that they wish us to review their presentation to the women's directorate that did the study, then I can go and get it, but there were 400 submissions and I hesitate to ask for all 400 submissions.

Mr. Callahan: The difficulty I see with that is that if some of them just ignore this or do not choose to get in touch with the women's directorate, we may never get the copy of that submission.

Clerk of the Committee: No. If they indicated to us, we would contact the women's directorate from my office and get a copy. As I said, there are 400. It would mean 400 exhibits that you would have to start right off the bat.

Mr. Callahan: Does this invite you to authorize us to obtain from the women's directorate a copy of your brief?

Ms. Gigantes: No, they are public briefs.

Mr. D. R. Cooke: I am sympathetic to what I am hearing from Ms. Gigantes. I would move that the sentence be amended to read as follows:

"As a contributor to the government's Green Paper on Pay Equity, the committee invites you to indicate to us if you wish us to peruse a copy of the presentation that you submitted at that time and to submit to us any additional data you may now have for its consideration."

The Acting Chairman (Mr. Villeneuve): As I gather, the gist of your amendment is to emphasize to the groups that they would not have to be present here in person.

Mr. Callahan: And they would not have to reproduce the copies.

The Acting Chairman: I think probably the chairman and the clerk wanted to convey that message and it might have been a bit ambiguous.

Mr. O'Connor, did you want to add something?

Mr. O'Connor: That was the gist of my remarks. I would be prepared to put the question right now.

Mr. Callahan: Just before the question is taken, or I could do it after, I might ask if we can get those 400 exhibits well in advance of the start of the hearings so that we can--

Clerk of the Committee: With this amendment, I understand that if they so indicate, I will go and get the submission they made on the green paper and have that available to the committee.

Mr. Callahan: Will that be fairly well in advance of the dates we are sitting?

Clerk of the Committee: It would depend on when they contact me. As quickly as they contact me, I will get the copy.

The Acting Chairman: Should we then have a date in here?

Mr. Callahan: I think there should be a date. If there is not, we are going to get a lot of exhibits the day we are sitting and we are going to have witnesses giving testimony. We are going to try to read these and the additional material to try to understand it, which might be very difficult.

Ms. Gigantes: Can I make a suggestion? The green paper consultators are due to provide a public report on the public consultation. They were to provide it by July 1, but it is not complete yet. When that report is made and even before that report is made, those people in the women's directorate who have been slaving to create the report are well aware of those submissions directly associated with the matters before us, in other words, the public service and the public sector.

At this moment, we could put a request to the women's directorate to have an indication from them of which submissions addressed the questions before us and will be before us and forward copies of those submissions. I am sure that would be greeted warmly by all concerned.

Ms. Hart: I agree with my colleague. It seems to be a waste of words even to say, "Do you want us to look at them?" Of course, they want us to look at them; they would be fools not to. Why do we not just say, "If there is anything additional that you want us to put our minds to or if you would like to make a presentation...." As Ms. Gigantes says, we can get the relevant briefs from the women's directorate.

Mr. Callahan: I wonder if my colleague is suggesting that it be: "As a contributor to the government's Green Paper on Pay Equity, the committee has secured copies of your report for consideration. Should you wish to add any additional data you may have for its consideration, you may do so."

That way it lets them know we have the report.

Ms. Gigantes: They are not reports; they are submissions.

Mr. Callahan: Submissions or whatever you want to call them. That way they know we have them and they can add anything extra that they want to.

The Acting Chairman: Did you want to make it somewhat obvious to them that they could also be present?

Mr. Callahan: I suppose so. Maybe it could be, "As a contributor to the government's Green Paper on Pay Equity, we would advise you that the committee has obtained copies of the presentation you submitted at that time and you may forward to us any additional data in writing or in person."

Clerk of the Committee: Then you would not need to put the paragraph in about the act because all that information is in the act.

Mr. Callahan: Yes.

The Acting Chairman: Just a minute.

Mr. D. R. Cooke: How many presentations were there to the green paper?

Clerk of the Committee: There were 400. I believe it was about 275 written submissions and approximately--I am guessing--125 oral presentations. Do you want a copy of the green paper?

Mr. D. R. Cooke: We might as well, if we have all the rest.

Ms. Gigantes: Green paper?

Clerk of the Committee: On pay equity.

Ms. Gigantes: Sure. That is an elementary tool.

Clerk of the Committee: You want that and you want all of the written submissions.

Mr. D. R. Cooke: Are you talking about a transcript of everything?

Ms. Gigantes: You are talking about literally yards of material.

Mr. D. R. Cooke: And we have to read it all.

Ms. Gigantes: Can I suggest here that we might ask the women's directorate to provide us, as soon as the report of the consultators is prepared, with copies of that and, further, that they indicate to us those briefs which addressed those specific matters in Bill 105 and those matters likely to be related to our discussions of Bill 105, namely, the public service and public sector.

Clerk of the Committee: In the back of the Green Paper on Pay Equity, there is a list of those major contributors. There is an appendix list.

The Acting Chairman: Of all or only major contributors?

Clerk of the Committee: The major contributors, as I understand. I did not count them.

Ms. Gigantes: No, the green paper was published before people came forward in the public consultation.

Clerk of the Committee: They have major contributors listed in the back of that. I think it is appendix III.

Ms. Gigantes: In the creation of the green paper. You are talking about the preliminary consultation, the primary consultation.

Clerk of the Committee: Those are the 400 I am talking about also. When I spoke to the women's directorate, those were the 400 contributors.

The Acting Chairman: I have a little problem with what might not be a major contributor that still had some input.

Clerk of the Committee: Those are included in that 400. They are not included in the--

Ms. Gigantes: Why do we not take a little guidance from the women's directorate on this matter and ask it what material it has that we should be looking at, to put it simply? Second, when the report of the consultators is made public, obviously there is going to be discussion in that report that relates directly to matters which will be discussed here; so we would like the report.

Clerk of the Committee: And make a decision then on sending the letter out at the beginning of the hearings based on the information that you have from the women's directorate?

Ms. Gigantes: No. I think we should send the letter now to the 400 original contributors.

Mr. D. R. Cooke: On a point of information, am I to understand this 400 figure is not the figure of the number of witnesses who appeared before the consultative committee, but groups and individuals who were consulted before the green paper was put out?

Clerk of the Committee: It was my understanding in speaking to the women's directorate that it had approximately 275 written submissions and approximately 125 oral submissions in the preparation of the Green Paper on Pay Equity, which is what I am referring to in this second sentence.

Ms. Gigantes: No, no.

Mr. D. R. Cooke: According to the minutes of the steering committee, appendix I is a letter to be sent to all contributors.

Ms. Gigantes: I think there is a confusion on my part. The clerk has alluded to these presenters as contributors to the green paper. They were not contributors to the green paper; they were contributors to what is called the green paper process. They were contributors to that public consultation which took us from December until June.

Mr. D. R. Cooke: That is what the steering committee meant, contributors to the green paper process. Right?

Ms. Gigantes: Yes.

Mr. D. R. Cooke: Do we have any idea how many contributors there were?

Ms. Gigantes: Yes, there was 400.

Mr. D. R. Cooke: Coincidentally, there were also 400--

Ms. Gigantes: There were 400, both written and--

Mr. Callahan: There were 400 in total is what Ms. Gigantes is saying.

Mr. D. R. Cooke: Oh, I see.

Ms. Gigantes: There were about 125 to 150 at public meetings who made oral presentations.

Mr. D. R. Cooke: I am still partial to my motion, which is still on the floor.

Mr. Chairman: I missed the motion as I was out of the room.

Mr. D. R. Cooke: It reconstructs the second sentence in appendix I to suggest that any contributor to the green paper may--

Ms. Gigantes: Process.

Mr. D. R. Cooke: The green paper process. yes. Perhaps we should add that word to it. They may indicate to us if they so wish that we peruse a copy of their submission and add any data to it. In that way, I think we could ferret out those groups and individuals who were still interested enough to respond and say, "Yes, we would like you to look at what we have said." Those who do not reply at all presumably do not have anything additional to say that is of enough merit for them to tell us to look at it. In that way, we would all save a little time in our reading and we would have less expense in making copies of everything.

5 p.m.

Mr. Chairman: I have a couple of speakers: Mr. Callahan and Ms. Hart. Before I go to them, I had hoped we could wind up close to five o'clock. I indicated to some members of the committee that we would probably not go beyond an hour. I have another problem in that I have a meeting at five o'clock. I did not anticipate that we would get into quite the amount of discussion we have had so far. I will move to Mr. Callahan and then Ms. Hart and complete this as quickly as possible.

Mr. Callahan: Regardless of how much information there is, we have to read it. My concern is that whatever way you set this up, perhaps when those briefs are obtained they might be put into some manageable form, such as binders.

Clerk of the Committee: I can put them in expandable folders, but you can count on eight or nine.

Mr. Callahan: Have you anything in there to help people carry these around?

Ms. Gigantes: We should take advice from the women's directorate.

Mr. Callahan: At the subcommittee meetings there was discussion about having a fellow from the legislative library do a précis.

Clerk of the Committee: Not a fellow. She is here waiting for your approval now.

Mr. Callahan: I am sorry. I thought we had mentioned a fellow.

Clerk of the Committee: Philip is not available. He is the expert in that area.

Mr. Callahan: Can we inquire whether that could be done?

Ms. Gigantes: What could be done?

Mr. Callahan: A précis of what was presented.

Ms. Gigantes: That is what the green paper consultants' report will be, a précis of what was heard at the consultation. When that document is available, if it ever becomes available, we can look at it and get a précis. If they do nothing else, I think we can expect they will produce that.

Mr. Chairman: Could you give us your opinion on this?

Mrs. Ward: Am I being asked if I would be able and prepared within the time constraints before the committee, as I understand them, to give you a précis of all the written and oral submissions that have been presented to date in the green paper process?

Mr. Chairman: That was the question raised by Mr. Callahan.

Mrs. Ward: I do not think that is possible.

Ms. Gigantes: No, it is not possible. I read one day's hearings and I spent another day at another hearing. It took me four hours to read one day's hearings. There were seven days of hearings, plus all the written material that was submitted. The hearings do not deal with the written material. They deal with the oral presentations.

This is why I suggested at the beginning of our steering committee consideration that we should have limited hearings and invite the people we thought we should hear. Having gone past that stage, I think we should seek advice from the women's directorate about how we organize our consideration. They have gone through it minutely and they were present at all the hearings.

Why ask another member of the public service to sit down and do something public servants have already been engaged in doing for months?

Mr. Chairman: I know Ms. Hart will straighten this whole thing out with her next statement.

Ms. Hart: I tend to agree with my colleague. The amount of material is voluminous and it is a duplication of effort for us at this stage to have anyone or to try ourselves to précis the information. I am still mixing up apples and oranges. I understood there were two levels of consultation, one before the green paper was produced and one more recent.

Ms. Gigantes: There are three now. One was before the green paper was produced. Those groups are listed in the green paper.

Ms. Hart: Yes, I understand.

Ms. Gigantes: Then there were all the people who came forward to speak to the green paper. Now there is another round of consultation going on.

Ms. Hart: So we have three levels.

Ms. Gigantes: Three rounds.

Mr. Callahan: Ms. Gigantes is saying we are into the third level.

Ms. Gigantes: No, we are now into the fourth.

Ms. Hart: Yes, I understand that. There is the question of oral versus written presentation. We seem to mix all those up. Do we truly want a précis of all the oral presentations with respect to the public sector? I am not going to plough through all that transcript material, and I am sure the rest of the committee is not going to have time to do it either.

I agree with my friend that we should talk to the women's directorate. They have been living and breathing this issue, and I am a newcomer. Surely we can bring this down to manageable proportions by taking their advice or at least listening to it.

Ms. Gigantes: Are we at a point on this committee where my first proposition is going to be accepted now? Do you think it might be timely if I suggested that we reconsider the whole business of public advertisement? Do you think it might be acceptable to this committee if I proposed that having sought advice from the women's directorate on the issues before us in this bill that we invite to come before us people who will speak directly to those issues from experience and from previous consideration of these matters?

Mr. D. R. Cooke: The steering committee should have written a minority report.

Mr. Chairman: Could I make a suggestion to get us off top-dead centre on this? If you like, either as chairman or accompanied by the steering committee, I can have the clerk set up a meeting with the women's directorate to look for some guidance on how its members suggest we proceed from this point onward. Then I can come back to the full committee with a report of that information. Would you agree to that?

Clerk of the Committee: When would you like to come back, if the House is not sitting?

Mr. Chairman: We have to do it as quickly as possible. If the House is not sitting, that complicates the matter. We are anticipating things to which we do not have answers. Could I get someone to move this? If you want it with the steering committee, that is fine and if you want it just with the chairman and the clerk, that is fine. I like to have the steering committee there whenever possible; that is what it is there for.

Ms. Gigantes: Would it be reasonable, considering it is possible that the House may rise this week, that we take a brief time tomorrow and set aside time to meet with somebody from the women's directorate as a group that has been working on this matter? I do not care if it is an informal or formal meeting, but with as many members as we can round up.

Mr. Chairman: That is fine, but I am away tomorrow.

Ms. Gigantes: Thursday?

Mr. Chairman: Thursday is better for me.

Ms. Gigantes: Thursday morning?

Ms. Hart: On Thursday we have the standing committee on general government.

Ms. Gigantes: If we did it early on Thursday?

Ms. Hart: They sit all day Thursday, morning and afternoon.

Mr. Chairman: Why do we not target for nine o'clock on Thursday morning?

Clerk of the Committee: Is this an unofficial meeting? If we have an official meeting, we will have to have authority of the House.

Mr. Chairman: No, not an official meeting. We will call it an organizational meeting.

Mr. Callahan: Can I ask my colleague to take my place?

Mr. Chairman: It is not a steering committee meeting. It is the whole committee if members can be in attendance. Where will we meet?

Clerk of the Committee: I will let you know as soon as I find a spot. We could possibly meet in the room where the standing committee on finance and economic affairs intends to meet afterwards.

Mr. Chairman: We would have to be out of there by 9:55 a.m.

Clerk of the Committee: That is right.

Ms. Gigantes: We have not dealt with the most critical matter in my mind, which is when we are going to meet.

Mr. Chairman: We have to have the bill referred to us.

Clerk of the Committee: And we have to have the approval of the House and the dates they are going to approve.

Ms. Gigantes: These dates outlined on the top page of the report in front of us are not the dates we dealt with in the steering committee. I find them absolutely impossible as one person, because I am going to be called upon to sit on the standing committee on the Legislative Assembly at some point to deal with Bill 34. I do not know what their current schedule is, but we were to have hearings in September.

Mr. Callahan: Those dates were discussed by the subcommittee.

Ms. Gigantes: No, they were not.

Mr. Callahan: I copied them down. They are right there and they are exactly the same dates.

Ms. Gigantes: We were going to start the first week of August.

Mr. D. R. Cooke: Is it appropriate for me to withdraw my motion? It is not being considered and the subject matter of the debate has changed.

Mr. Chairman: All right, it is withdrawn.

5:10 p.m.

Mr. Callahan: I have written down from 10 to 12 and from 1:30 to 5, Tuesday through Thursday, for the weeks of August 18, 25, September 2, September 22, 29 and October 6, which is exactly what is there.

Ms. Gigantes: It must have been a different meeting.

Mr. Callahan: You may have left early.

Ms. Gigantes: I left once a decision had been made, and as far as I knew, the meetings were starting as soon as we could get them going which was going to be August 1.

Mr. Callahan: You did leave early, and the problem was the Canadian Parliamentary Association is sitting through to August 2 and no committees could sit before that or during that time.

Mr. D. R. Cooke: No committees can sit the week of July 28.

Mr. Callahan: And that goes through until August 2.

Clerk of the Committee: There were two other dates mentioned, the week of August 5 and the following week, but after discussion those were the dates for six weeks. I think you had gone, Evelyn, because the research issue came up after you left as well.

Ms. Gigantes: I did not leave early. I left when the business of the subcommittee, as far as I knew it, was complete.

Clerk of the Committee: You left at the end of the discussion on the advertising.

Ms. Gigantes: As far as I knew, all decisions that were to be before the subcommittee had been made.

Clerk of the Committee: There was still the item of research at that point, and discussion was going on about dates.

Ms. Gigantes: Nobody indicated to me as I was leaving the meeting that the meeting was not complete.

Clerk of the Committee: I tried.

Ms. Gigantes: As I left, I said: "That does it. That is our business."

Mr. Callahan: Let us shorten this by getting some dates.

Mr. Chairman: I wonder if that is not an exercise in futility at this point, not knowing when the bill is going to be referred. In chronological order we are somewhat out of whack here at the moment.

Ms. Gigantes: The bill will be referred before we rise.

Mr. Chairman: If that is the case, then we will know at that point.

Clerk of the Committee: Those other two weeks are still on the list for approval by the House leaders. It is up to them to decide when this committee can sit, taking into consideration the responsibilities of committee members in other committees. They are juggling the agenda now.

Ms. Gigantes: I just told our whip his juggling was inadequate. I have to start dealing with him first, do I not?

Mr. Chairman: If it is agreed, we will meet on Thursday at nine o'clock. Things will start to be put into place in a somewhat more understandable fashion then.

Clerk of the Committee: Can I take it the matters that have been discussed are approved? The only outstanding matter is the area around the green paper and the women's directorate. Could I have a motion to that effect approving the report except the areas around the green paper?

Ms. Gigantes: And the dates.

Mr. Chairman: Ms. Hart moves that motion. All in favour?

Motion agreed to.

Mr. Chairman: Is there anything further to come before the committee?

Ms. Gigantes: What we have decided is we have not decided anything.

Mr. Chairman: What we decided is we still have some questions to be answered.

Clerk of the Committee: I will let everybody know if there is any problem with the women's directorate for Thursday morning.

The committee adjourned at 5:15 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, SEPTEMBER 23, 1986

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Offer, S. (Mississauga North L)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Hart

Gillies, P. A. (Brantford PC) for Mr. Villeneuve

Poirier, J. (Prescott-Russell L) for Mr. D. W. Smith

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Clerk pro tem: Arnott, D.

Staff:

Revell, D. L., Legislative Counsel

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Wrye, Hon. W. M., Minister of Labour (Windsor-Sandwich L)

McAllister, Dr. H., Acting Executive Assistant to the Assistant

Deputy Minister, Labour Policy and Programs

Silk Klein, S., Policy Advisor, Labour Policy and Programs

From the Workers' Compensation Board:

Wolfson, A. D., Vice-Chairman and President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, September 23, 1986

The committee met at 10:16 a.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Members of the committee, we can get under way very shortly. We now have all the parties represented.

I will advise the members of the committee that, as of yesterday, we had booked hearings into the third week on Bill 105. Some additional groups probably will come forward that may wish to make representation before the committee, but as of now we have two full weeks that are already scheduled for the committee, plus a third week that is now being scheduled. That is up to date as far as the requests for appearances before the committee have gone up to this time.

This morning it is the intention of the minister, Mr. Wrye, whom I welcome to our committee--we are pleased to have you here, Mr. Wrye--to make an opening statement with respect to Bill 105. Before Mr. Wrye gets under way, I will indicate that in approximately half an hour I will have to leave the chair. Mr. Partington will sub for me for a few moments. I have a quick meeting and then I will be back. I want you to know it has nothing whatever to do with your remarks, as far as I know at this time. If they are not to my liking, I may leave even earlier, but I do not plan on doing that.

Hon. Mr. Wrye: I will hold you to the half hour.

Mr. Chairman: With those brief opening comments, unless any member of the committee has any comment to make, I will turn to the minister. Would any member of the committee like to make any comment at this time?

Mr. Polsinelli: Just as a point of clarification, have the meetings for Thursday and Friday been cancelled? I am just looking at the proposed agenda for this week.

Mr. Chairman: That is correct. We will be meeting only today and tomorrow. No meetings are scheduled for Thursday and Friday of this week.

Again, welcome, Mr. Wrye. We are pleased to have you here. This is going to be an involved and complex bill. I am sure you will join with me in those particular sentiments. We look forward to your opening remarks, so you can get under way.

Hon. Mr. Wrye: Thank you, Mr. Chairman. It is indeed a great pleasure to be here. One of the things that happens when you have a ministry down the street, when you do not have any bills before committee and when the House is not sitting is that you do not see your colleagues from all parties, and it really is a pleasure to be back and to see all of you. I will probably regret having said that within a few hours, maybe even within a few minutes, but let me put that on the record first.

I am joined this morning by, on my immediate left, Dr. Heather McAllister, who is a policy adviser in the Ministry of Labour and who has had a great deal to do with the development of Bill 105. Heather will be joining you for all of the sessions as an expert in terms of any questions you may have and clarifications you may need during the session. After these opening comments, she will also be taking the committee through the legislation and answering any questions that you have prepared during the day.

On her left is Dr. Alan Wolfson, late of the Ministry of Labour and now the president and vice-chairman of the Workers' Compensation Board. As I am sure you all know, Alan played a major role in the development of Bill 105 at the time he was the assistant deputy minister of policies and programs in the Ministry of Labour.

As I said before, it is with great pleasure that I appear today to take part in the committee's deliberations on Bill 105, the Public Service Pay Equity Act. The bill now before this committee places the government of Ontario in the forefront of reform in helping to ensure economic equality for women in this province. By this bill, the government is adopting pay equity as a basic tenet of its employment policy. This is the first step in the government's initiative in developing effective pay equity policies for all sectors of employment in the province.

As members may be aware, Bill 105 was fashioned taking into account the views of the major interested parties. I refer to the Ontario public service unions and the employers, which are the Ontario Civil Service Commission and the six agencies that are covered by this legislation: the Niagara Parks Commission, the Liquor Control Board of Ontario, the Liquor Licence Board of Ontario, the Ontario Housing Corp., the Toronto Area Transit Operating Authority and the Workers' Compensation Board.

I should also note that extensive public consultations just recently concluded on the implementation of pay equity in the broader public and private sectors have proceeded under the direction of the Attorney General (Mr. Scott).

With the release of the report of the consultation panel in early September, my colleague the Attorney General reiterated the government's firm commitment to introduce further pay equity legislation later in this session.

It would be worth while to consider once again some of the special characteristics of the Ontario public service which justify the adoption of a separate and distinctive approach to the implementation of pay equity.

First, the wage gap in the Ontario public service is about half that in the economy as a whole.

Second, the generally large size of the public service institutions covered by the bill provides a sufficient array of dissimilar jobs for meaningful pay equity comparison and ensures that the organizations themselves have the resources to implement pay equity expeditiously.

Third, there are in place in the Ontario public service effective collective bargaining and dispute-resolution processes that will help ensure the expeditious implementation of pay equity for a high proportion of employees.

Finally, we begin with the public service because the public service experience in some other jurisdictions has been instructive in developing Ontario policy.

Manitoba is the only other Canadian jurisdiction with a pay equity program that allows the parties to negotiate their own plans. A two-phase approach has been adopted for the public sector. Pay equity implementation for the Manitoba civil service is under way and is to be followed in a second phase by the crown and external agencies.

Similarly, in 1982 the state of Minnesota passed a law to provide for the implementation of pay equity for state employees and in 1984 extended pay equity to local governments: cities, counties and school districts.

Let me take a moment to review briefly the main features of the program that Ontario's Bill 105 proposes. These constitute a strong and effective legislative model for pay equity.

The bill sets out a two-stage approach for pay equity in the public service.

During the first stage, which is called the proactive stage, pay equity plans will be drawn up, gender-based inequalities will be identified and adjustments to provide redress will be determined. We believe this stage will last approximately four years.

The strengths of the collective bargaining process will be utilized to the fullest in the formulation of pay equity plans for bargaining unit employees within each organization.

I believe a positive feature of this bill is the latitude it gives in each instance in choosing a job comparison scheme. It is implicit in the bill that labour and management in each organization are in the best position to choose their own job comparison scheme, rather than to have one imposed. It is important to remember that comparison schemes will be limited to each employer's own establishment.

Notwithstanding that, there is significant flexibility for labour and management in the legislation. The bill is specific in certain ways. For example, very precise deadlines are established for the process of implementing pay equity plans and providing wage adjustments.

In addition, specific standards for gender predominance are established. In fact, as I have said on many other occasions, our standards are the most generous to be found in any jurisdiction. We say that a predominantly female group of jobs is a group in which at least 60 per cent of all jobs are held by women. The ratio for a male group of jobs is 70 per cent.

For the last few minutes I have been discussing the first stage of the pay equity program proposed in Bill 105 with you. Although some complaints concerning the plans that are developed in the first stage will be allowed, it is primarily in the second phase that a complaint-based program comes into full force.

As with other government complaint-based programs, such as those administered under the Employment Standards Act and under the Ontario Human Rights Code, this requires an actual complaint before action can be taken.

This program will be overseen by a Pay Equity Commission, which would be responsible for investigating and resolving any ensuing complaints. In addition, the commission would have a mandate to conduct research and undertake public education programs related to pay equity.

During the first phase, the Pay Equity Commission would devote most of its energies to reviewing pay equity plans, monitoring their implementation, and issuing orders where required. The members of the commission will be equally representative of employees and employers.

The intent of Bill 105 is to ensure the development of strong and effective pay equity in the Ontario public service. The bill before you today achieves that in a balanced and fiscally responsible way.

However, the public discussions of the bill since its introduction suggest to me that certain amendments to strengthen it are warranted. Let me identify the types of amendments the government will be proposing.

The first type of amendment clarifies the procedures set out in the bill and more clearly delineates the rights of the parties in achieving pay equity.

The second type of amendment will improve the complaints procedure. Specifically, this category of amendment will provide extended grounds for complaints, enhanced access to information for interested parties and precise time lines for the filing of complaints.

The third kind of amendment concerns the powers and role of the pay equity commission. The ability of the commission to monitor and enforce pay equity plans will be enhanced.

Finally, the government will amend the bill to provide for greater precision and consistency in the bill's language. These amendments will also clarify the intention of the act.

We will be presenting these amendments today and I think a copy of them has been tabled with you. The amendments are, first, in order of the section in which they appear in the bill, and I think you also have a second, small, two-page package which puts them into various categories so that you can understand how the amendments have an overall impact.

Should you have any questions regarding the content of the amendments in the next few hours, or indeed throughout the discussion of Bill 105, my officials and I will be delighted to respond to them.

I thank the committee for its attention. Thank you for your attention, Mr. Chairman; you have not left during these comments.

Mr. Chairman: Your statement was very brief.

Hon. Mr. Wrye: I have 20 minutes to go.

This is exciting and positive legislation and I will be listening and following with great interest the comments that are made to this committee and the discussion that I am sure will follow. Thank you.

Mr. Chairman: I will turn to the committee. There may be questions at this stage, before we get into discussion on the proposed amendments.

Mr. Gillies: I do not know what procedure you want to follow, but I assume both the opposition critics have responses to the minister's statement. I know I have one.

Mr. Chairman: If we are to have official responses, I believe Mr. Gillies and Ms. Gigantes have responses. Do you want to go into those now?

Mr. Polsinelli: Yes.

Mr. Chairman: All right. Mr. Gillies, we will now have your official response.

Mr. Gillies: Thank you. I say to the minister, from our side of the table, it is indeed good to see him and all of us back here again, although some of us have been here on various committees all summer anyway. Mr. Polsinelli and I are trying to figure out who is following whom, but maybe that will become apparent.

I am very pleased to be here and to say a few words on behalf of the official opposition with regard to Bill 105. I want to say at the outset to the minister that I will be looking at his many amendments with great interest and that I hope and expect some of them will go some distance towards strengthening and improving the bill. I do not pretend to have had a chance in the last three or four minutes to digest them all, but I will attempt to do so very quickly.

We will also have amendments to put before the committee with regard to the bill, and in so doing I say to him candidly, since the minister and I are old friends, I am just beginning to appreciate fully some of the benefits of opposition and of minority government. I hope I say to the minister constructively and with respect, not in any threatening way, that one of the strengths of minority government is that Ms. Gigantes and I and our respective parties will have as much to say about what pay equity is going to look like in this province as he will. I hope that at the end of this process we will have worked together constructively to arrive at that.

10:30

It is in that spirit that I say we were somewhat disappointed with the bill as first presented to us. It appears to be the most minimal step that the women of the province could have expected from the new government. With respect to the minister, because he was not making the statements or raising the expectations during the election campaign in 1985, I suggest that the very tentative action put forward by Bill 105 falls well short of what the populace of our province will have expected from the new government based on what we had been led to believe during and after the election campaign.

The steps you are taking under Bill 105 are minimal and will apply only to the very narrowest definition of public sector employees. It is with this in mind that our party will be moving amendments to broaden, strengthen and improve your proposed legislation.

The definition of "public sector" that you have chosen to follow in the context of this bill, as the minister has said, includes the employees of ministries, the Ontario Provincial Police, the Niagara Parks Commission, the Liquor Control Board of Ontario, the Liquor Licence Board of Ontario, the Ontario Housing Corp., the Toronto Area Transit Operating Authority and the Workers' Compensation Board. I am sure Dr. Wolfson is very pleased to see his

few agency included on the list. That group of ministries and agencies accounts for about 76,000 employees, 29,000 of whom, by our calculations, are in what would be known as female-dominated types of employment.

The Progressive Conservative Party will be proposing that the legislation be amended to conform with the definition of "public sector" used in the 1982 inflation restraint program. Our rationale for that is readily apparent. As I said at the time we announced our position on this bill back in April, it seems only reasonable to our party that workers who were affected by public sector wage controls now should have the benefit of public sector pay equity legislation.

When times were tough during the recession and extraordinary measures were being taken to hold the line on government expenditure, some of the people in the forefront of doing that under the inflation restraint legislation were the broad definition of public employees. We now believe that times are better. Government coffers are better equipped to extend a very tangible benefit such as pay equity to that same broad public sector.

We will move amendments to expand the scope of this legislation to include the groups already included under the legislation, the immediate civil service and the crown agencies outlined above, and all other crown agencies including Ontario Hydro and the Ontario Northland Transportation Commission. We will move to include the province's universities and hospitals, the employees of municipalities and school boards, and employees of provincially funded agencies and organizations that can be defined and monitored by the ministry. We estimate that these inclusions will extend public sector pay equity to some 650,000 employees, of whom 224,000 would be under what we consider female-dominated types of employment.

I say sincerely to the minister that we fully appreciate the scope of the changes we are anticipating. It includes many times the people that your bill, as it stands, would include. For any number of reasons, those I have already stated and others, we believe that this is fair and just and that it should be done.

Another amendment that we will bring forward will concern the arbitrary numerical cutoff. The government bill stipulates that comparisons of job type are to be made only between gender-dominated job categories with pay adjustments limited to female-dominated job classes. The numerical cutoffs are set at 60 per cent for female-dominated job classes and 70 per cent for male-dominated job classes.

The official opposition is proposing that the bill be amended to remove all reference to numerical cutoffs and that only positions be compared. Again, as I said in April, the focus of pay equity legislation should be on the comparability of the work performed and not on the sex of the incumbent worker. Numerical cutoffs will mean that many workers who should be covered by the legislation will be excluded.

We will also be introducing amendments that we believe necessary to strengthen the part of the bill dealing with the payment of discriminatory wages. We believe the legislation must make the payment of discriminatory wages illegal by containing similar wording to the existing human rights legislation at the federal level, and that which is in power in Quebec, which states unequivocally that the payment of unequal wages for work of equal value is discriminatory. I say to the minister that this may be in one of your

amendments or something similar to it. I do not know. If it is, I will certainly be happy to look at it.

The minister and I have discussed this amendment, and he asked me, if I may paraphrase, "Why on earth do you need that kind of statement when we are dealing with our own employees?" That is fair when you are talking about the narrow public service, but in the spirit of our other amendment to extend it to other agencies somewhat further removed from the civil service, I think such a statement is necessary. There may not be in every agency and in every part of the province the enthusiasm that I believe we share here at Queen's Park for this type of legislation.

This same principle applies to the question of sanctions. The government bill provides for orders to be filed with the Supreme Court in the case of noncompliance but makes absolutely no reference to other sanctions. We believe that sanctions must be there to ensure compliance with the act and that the bill must be amended to include a provision for fines for noncompliance on the part of employers. Again, I say to the minister, because we have discussed this one, that may not be necessary if the definition he has put forward of public service is adhered to; but if we move to the broader public service, then I think the committee will come to understand that sanctions are necessary because of the arm's-length nature of some of the agencies with which we will be dealing.

I was very pleased to hear the minister mention an amendment on the monitoring question. I have not had a chance to read it, but I will. None the less, our position is that we understand that this legislation establishes a commission to monitor implementation and compliance but makes no provision for ongoing monitoring once pay equity has been achieved. We note that once pay equity has been reached, it is possible under the bill, as we see it, that gains provided under pay equity could be eroded in subsequent bargaining or, in the case of nonunion employees, in subsequent salary adjustments. Therefore, the opposition will be looking for an amendment to provide for a monitoring procedure to stay in place to monitor awards given under pay equity.

Regarding the question of retroactivity, we note that the bill as proposed will come into effect on the date it is proclaimed, with two years following proclamation expected before wage adjustments will be made. We think the government can do a bit better than that and we will be proposing that the legislation be amended to come into force on the day it was introduced, February 11, 1986, and that the period for salary adjustments to come in be shortened, if at all possible, although we appreciate the work and the complexity of bringing in these salary adjustments.

I might say paranthetically there was a proposal within our caucus that the legislation should be retroactive to Frank Miller's throne speech, but we decided not to rub your noses in it quite that badly.

Hon. Mr. Wrye: Perhaps we should go back to Sheila Copps's resolution.

Mr. Gillies: We could indeed have gone back to Sheila Copps's resolution.

10:40

Mr. Chairman: We could have gone back to Moses.

Mr. Gillies: We could have gone back to the first time anyone ever uttered the idea.

Interjection.

Mr. Gillies: The first time Tim Armstrong ever thought it was a good idea? I do not know.

Finally, we want the legislation amended to remove two exceptions the bill provides for: one for employees in rehabilitation programs and the other for positions for which there is a labour shortage.

Our feeling is that, in large measure, rehabilitation positions are filled by people with mental or physical handicaps. It is readily apparent--and I know the minister would not disagree with me--that such people already face a certain degree of discrimination in the work force and in seeking and maintaining employment. We see no reason to exclude them, with all the obstacles they already face, from the benefits of pay equity. If the minister cannot see eye to eye with me on some of the other amendments we have put forward, I hope we can come up with something unanimous in the committee on that point. I think it would behoove us to do so.

In the case of employees in areas designated as having labour shortages, we believe the phenomenon has served over the years to raise the level of men's wages, since the shortages tend to occur in skilled areas and the skilled areas tend to be filled by men. We are concerned that retaining the labour shortage exemption would simply serve to continue to disadvantage women vis-à-vis their male counterparts. In the spirit of the other amendment I just mentioned, we hope we can work out something co-operatively on this one that might be a bit better.

By way of conclusion, we put these amendments forward in good faith. I did not take kindly to the suggestion, not by this minister but by the minister responsible for women's issues (Mr. Scott), when he said to the opposition parties in the House during the last session that in moving amendments to Bill 105 he thought we were trying to scuttle pay equity.

I took severe offence to the suggestion at the time. I felt it worth restating now that we in the Progressive Conservative Party have put these amendments forward because we believe they strengthen the legislation. In this committee or any committee of the House, we are here to try to strengthen and improve legislation that is put before us. That is our agenda. I have to believe it is the agenda of the New Democratic Party and I have to believe in good faith it is the minister's agenda. I hope in the next number of weeks we can work co-operatively to implement some of these changes and come up with a much better public sector pay equity bill.

Mr. Polsinelli: Given your last comment, it would be inappropriate for me to think you were trying to sabotage the legislation.

Mr. Gillies: Absolutely inappropriate, Claudio. I know you would never suggest that.

Mr. Polsinelli: I just wanted to clarify that.

Mr. Chairman: Having had that completely, totally and irreversibly clarified by Mr. Polsinelli and Mr. Gillies, we will move on now to Ms. Gigantes's opening comments.

Ms. Gigantes: Thank you, Mr. Chairman. As is my wont, I will be very brief.

I am pleased to be here today, finally, to begin this work. The comments I would like to make relate to the setting in which we work and where the legislation fits into the promise of the minority Liberal government that there would be equal pay for women in Ontario.

I particularly welcome the comments of Mr. Gillies and the support he is indicating from his party for many of the concerns we have with the legislation. I hope we will be able to extend that commonality of view to the whole approach we take to the question of equal pay, which is now a long-standing promise of the government.

A year ago the government released the Goldfarb study, which indicated quite clearly that the people of Ontario, men and women included, felt the government was moving too slowly on the issue of equal pay for work of equal value. I say "men and women" because 62 per cent of women who worked at home felt the government was moving too slowly a year ago; 62 per cent of women who were in the paid work place felt the government was moving too slowly; and 45 per cent of men felt the government was moving too slowly. That was after a couple of months of a government which had promised reform in this area, a government which had promised to provide the protection of equal pay for work of equal value for women in the public and private sectors.

What we have before us, as we noted in our second reading debate, is a bill which provides pay equity for 1.5 per cent of the women who work for pay in Ontario. The extension of the bill which was proposed by Mr. Gillies and supported by this party is, in our view, a small step towards the achievement of the government's promise and the government's statement of policy which was made many moons ago, indeed a whole fall ago.

I would like to comment very briefly on how I see this bill fitting into that promise because I do not feel that it is in the direction of the promise. What was promised and what is understood by men and women in this province is that women who work in the province will get equal pay for work of equal value.

When we look at the major direction of this bill, it essentially establishes rigorously defined pay equity plans, with rigorously defined payout amounts, with small attention to the question of whether equal pay for work of equal value will be achieved even for that 1.5 per cent of women whom we hope it will affect. This is the mark by a large margin of putting into practise the principle of providing equal pay for work of equal value.

Whenever we look at the direction of this bill, its major mechanisms and the amendments that we want to make to this bill, we have to keep firmly fixed in our minds what our goal is. Our goal is not to achieve pay equity plans. Our goal is not to set up a system of one per cent of payroll payouts over four years. Our goal is to achieve equal pay for work of equal value for women in Ontario.

That is what we have to keep totally fixed in our minds and that is what we have to measure this bill and its coverage against and it is what we have to urge on the government very quickly in terms of attention to the women who work in the private sector.

I noted that Mr. Gillies has a good deal of faith in the adoption of this principle I speak of by the public service, public service managers and

the ministers of our public service who sit in cabinet. It raises the question of why should we be concerned for a total prohibition of unequal pay in the public service and suggests an amendment is in order to make sure that a complaint based on a case of unequal pay will be heard under this legislation and, presumably, further legislation, if we ever see it.

We have to remind ourselves as we sit here that in the public service of Ontario, with all the fine words that have been spoken for so many years, there is unequal pay. We know there is. It is entrenched. It is there in spite of job evaluation systems and all the nice words in the world that have been spoken inside and outside this Legislature by elected representatives for years and years.

I do not think we can assume a god-damned thing in the navy. I do not think we can assume that in the public service of Ontario we are not going to have to set up the same kinds of mechanisms we would expect to have to set up in the most difficult conditions under which women may work in terms of their equality of pay. We have to make sure this province is clean of discrimination against women in the work force.

One other point I would like to speak to very quickly is the question of this bill and how it affects the one quarter of women in Ontario who work part-time. Mr. Gillies has spoken of amendments he would like to see in terms of the exemptions of the application of this bill. As we go through this legislation, we have to look at it and say, "How much is that going to help the 500,000 women who work part-time in Ontario?" If one quarter of the women who are at work are part-time workers, we have to make sure that whatever equal pay for work of equal value legislation we are drafting, this sector of the model should cover the one quarter of the working force which is female and works part-time and bring the benefits to those 500,000 women that we want to see for all women.

10:50

This is a cumbersome bill, and it is my deep view that we are going to have to do something about the cumbersome mechanisms involved in the bill. It is a bill which is difficult to read. A woman in Ontario who picks up this bill and wants to use it to find out whether she is being paid unequally, how to address that inequitable situation and whether she is represented by a union, is going to have a great deal of difficulty doing that.

We can amend this bill so the five-stage, six-stage negotiated and consulted arrival at pay equity plans--again I underline that the goal always seems to be to establish pay equity plans as opposed to ensuring that what we are going to arrive at is equal pay for work of equal value--those mechanisms can be streamlined and made simpler, and that process will produce a quicker response for women in the pocketbook than they would have under the mechanisms laid out in this bill.

The minister suggests that the process of establishing a pay equity bill and having a payout begun--I am not sure whether he means begun or completed, but it seems to me we could be up to 18 months seeing a payout begun under the mechanisms here, and there is nothing to say, in my view, that after four years it would be complete under the mechanisms of this bill. This process is intolerably slow.

This has been a major political issue for well over a decade now. We have had a government which has promised to bring it in for well over a year. The public has been patient for action. For us to suggest that 1.5 per cent of the working women in Ontario can wait four years to see pay equity established by pay equity plans provided for under the mechanisms of this bill is not to deliver an awful lot; in fact, it is to deliver much too little.

I call upon members of the committee, and indeed the minister. When we go through the bill, there will be a good deal of give and take on how we approach this bill. I am looking forward to the comments of the presenters who are before us. We have to keep those large principles in mind and we have to assume that within a short period of time the public, which has been promised equal pay for work of equal value in Ontario, is going to get it and that the whole pattern we set up for bringing that promise to the public and making it real is going to be a pattern which covers all women, working part-time or full-time, and which actually does provide for equal pay and not for pay equity plans.

The Acting Chairman (Mr. Partington): Thank you, Ms. Gigantes, for sharing your concerns with us. Now it is time to turn the meeting over to Heather McAllister to start the review of Bill 105.

Hon. Mr. Wrye: Let me say briefly, although I could make an extensive response--I see Mr. Gillies has stepped out--any response on the specifics will wait until we hear the delegations and until we get to clause-by-clause discussion, but I have some real concerns about some of what I have heard today from the opposition. It raises some fundamental questions about the legislation.

I will be watching and listening with interest most particularly to the comments from Ms. Gigantes on the issue of taking this complex system and making it simpler and more easily understandable. I would say only that we have put together a system that is complex but which, as we developed it, we believed it was, unfortunately, necessarily complex to achieve pay equity, the purposes of which, I draw to the committee's attention, are outlined very clearly and succinctly in subsection 3(1) of the bill.

There were times, I say to my friend the member for Ottawa Centre, when I was as frustrated by the complexity as she obviously is, to judge by the comments she made in her opening statement. But to have a process that at the end delivers not plans or job evaluations but pay equity was of necessity complex, given the great complexity of the Ontario public service. This will perhaps become clear to committee members as Heather goes through the legislation, but if you can find a workable system that is simpler--and indeed, if witnesses come forward with systems where we can provide shortcuts that are workable--we will be delighted.

In reducing the beginning of the payout time to two years, I can assure you that through our long discussions we have reduced the time for the first payout very significantly from that which was first proposed in our first discussions as being achievable. In fact, some on the employer side might suggest that what we now have in terms of the first payout is very ambitious, to put it gently.

Just in closing, before Heather begins to pass me a note, I note that on that first payout two years out would be not the first one per cent but, as I am sure my friend the member for Ottawa Centre understands, two per cent of payroll at a minimum.

As we go through this process, as I said, I understand the frustration through our many months of discussion leading up to the tabling of this legislation. We attempted to simplify the process, and every time we did, it seemed a little more complex, at least to the minister.

I ask you only to keep drawing your mind towards Manitoba and the time lines they have found. It proves that Ontario is not unique. This is not a simple process if we are talking about pay equity. If we are talking about writing a cheque, we could do that tomorrow. What we are talking about, as Ms. Gigantes has pointed out, is equal pay for work of equal value and evaluating work, and the process is perhaps not as simple as we all wish it were.

I leave it at that, reminding the committee members only of the time lines established in Manitoba and, indeed, of how its timetable is proceeding. Since the passage of that legislation, I believe the job evaluation plan took approximately one year to put in place, and I note again the fact that Manitoba is moving forward in really a two-stage process. I have heard the comments of the both opposition parties about Manitoba's two stages and Ontario's one stage and, indeed, widening it significantly to include organizations that are not even included in Manitoba. I look forward to the discussions on that.

I look forward to hearing comments on how we will handle, for example, a number of the schedule 2 agencies--the Ontario Energy Corp., the Stadium Corp. of Ontario Ltd.--that are nonunion, how we will make this legislation work in those nonunion situations, since collective bargaining is perceived to be the way in which we will develop these pay equity plans. I look forward to hearing the committee's views on that. Obviously, we will have a fuller discussion on the scope of this legislation through the witnesses and when we come to clause-by-clause.

I will leave it at that. Mr. Chairman, because the bill is complex, I want to leave as much time as possible for the officials in the ministry to take the committee members through the legislation and give them as much comfort on it as they can.

11:00

Dr. McAllister: Before going into an elaboration of some of the features of the pay equity programs that are provided for in the bill, I would like to reiterate a point the minister made.

First, the purpose of this bill is to provide redress for systemic gender discrimination in pay for work in predominantly female jobs. You will find that provision captured in subsection 3(1) of the bill.

The policy approach to the bill is premised on the assumption that the wage levels or rates of pay for predominantly female work or jobs reflect gender discrimination or reflect a societal undervaluation of women's work in general. That is the underlying assumption we worked from in terms of framing a program to, first of all, proactively identify and provide redress for gender discrimination in the public service.

The second phase of the program, which is provided for in the bill, is to provide a complaints process for dealing with pay inequities which may arise following the completion of the proactive period.

I will go over the coverage once again to ensure there is clarity in terms of how organizations are being dealt with. The Ontario civil service

plus six agencies are covered: the Workers' Compensation Board, the Liquor Control Board of Ontario, the Liquor Licence Board of Ontario, the Niagara Parks Commission, the Toronto Area Transit Operating Authority and the Ontario Housing Corp.

Under this bill, the liquor boards are treated as one organization or one employer. The reason for that is the Liquor Licence Board of Ontario is a very small organization, and to provide the opportunity for meaningful pay equity comparisons, it was felt that it would be a wonderful idea to put them together. They also share a common bargaining agent, the Ontario Liquor Boards Employees' Union; so there is that commonality in terms of a collective bargaining relationship.

In total, 76,000 employees are covered by the legislation. Of the 76,000, 29,000 employees are in predominantly female groups of jobs, and of that 29,000, 24,000 are women; so that number--the 29,000 employees, of whom 24,000 are women--is the target of the legislation.

As the minister already mentioned in his speech, the bill has a two-stage approach to pay equity. In the first stage, which will last for approximately four or perhaps five years, there is a proactive requirement within the organizations already mentioned, that employers and bargaining agents will seek out and identify pay inequities that are gender-based and provide redress for those inequities.

During the proactive phase of the program, pay equity comparisons will be undertaken between groups of jobs, and in this respect the legislation is similar to Manitoba's legislation. It is the limited practice where there have been proactive pay equity programs in Manitoba and in the state of Minnesota for proactive programs to be group-based.

We say the proactive period will take four or possibly five years. I should note at this point that the legislation is extremely specific in terms of time lines and requirements for the development and implementation of pay equity plans and for adjustments to be made. The reason we cannot say this is definitely a four-year program is that we have provided in the legislation that where inequities are identified they will be redressed. There is a requirement for employers to make one per cent of payroll per year available for pay inequities. We say that if it takes four years, it is four per cent of payroll, and if it takes 4.5 per cent of payroll, then the program will run for four and a half years.

This is a feature which distinguishes us from Manitoba, where the limit on pay adjustments is absolutely four per cent of total payroll. It means we cannot say with great precision exactly when the program will end, but we can say with a fair degree of confidence it would be only four to five years, knowing the approximate size of the pay gap we anticipate will be identified and knowing one per cent of payroll will be available each year for those payouts.

At the completion of the proactive period, we move into a full complaints stage. During this time, any gender-based compensation practices that affect pay equity and are implemented after the completion of the proactive phase can be complained about.

In terms of gender predominance, this bill has two features. It has a minimal standard for automatic inclusion for predominantly male and predominantly female jobs. If 60 per cent of the employees in a job group are

female, then the group of jobs will be included in pay equity plans. If 70 per cent of employees in a group of jobs are male, then that group will be included in pay equity plans. There is also a feature of the legislation which provides for the inclusion of other groups in particular circumstances; for example, through negotiation between the bargaining agent and the employer.

The process for the identification of discrimination during the proactive period is essentially to rely upon benchmark comparisons between the predominantly male groups of jobs and the predominantly female groups of jobs that have been identified. A representative job level in each predominantly female group of jobs will be identified, and comparisons will be undertaken between that job level and any job level in any predominantly male group of jobs in terms of relative pay and relative value.

The legislation is permissive in terms of which approach is to be utilized for identifying the relative values of different jobs. As it stands, the bill requires that the criteria of skill, effort, responsibility and working conditions be utilized in a job evaluation or job comparison methodology. Beyond that, however, the bill is totally permissive, provided the system is gender-neutral.

The administrative body to oversee the implementation of the proactive pay equity program and to carry on during the full complaints phase will be called the Pay Equity Commission. It will enforce the legislation and will be structured along the lines of the Ontario Labour Relations Board. There will be a presiding officer, deputy presiding officers and, most important, equal numbers of employee and employer representatives.

During the proactive period, the Pay Equity Commission will review pay equity plans, monitor their implementation and issue orders for enforcement. During the full complaints phase of the program, the commission will investigate and resolve complaints relating to gender-biased compensation practices. I should also note that the orders of the Pay Equity Commission are enforceable by the Supreme Court of Ontario.

I want to step back for a moment and review with you the development and implementation of pay equity plans during the proactive period, because they are the crux for the identification and redress of gender discrimination during that period.

11:10

The first point I would like to make is that the development of pay equity plans will build on the strengths of existing collective bargaining processes in each of the organizations. Hence, we have a somewhat more complicated proactive implementation than you might have noticed in Manitoba.

In the first instance, there will be pay equity plans developed and implemented for each separate bargaining unit within an organization and for the separate nonbargaining-unit employees. For example, within the Ontario Civil Service Commission we have an extraordinarily large bargaining unit, the Ontario Public Service Employees Union, where there will be great room for the identification of pay inequities and redress.

Generally, because of the fair size of all our employer organizations, especially since we put the Liquor Control Board of Ontario and the Liquor Licence Board of Ontario together, we feel there will be an opportunity for meaningful pay equity comparisons within each of the separate bargaining units and within the management groups.

Following that, there will be the development of a combined bargaining unit plan. In the two instances where we have more than one bargaining unit, the two bargaining agents and the employer will sit down to look at the predominantly female and predominantly male groups of jobs covered by the two bargaining units and will identify any pay inequities. Redress will be provided as required.

Finally, for the wrapup of the proactive pay equity plan, there will be a comprehensive pay equity plan that will cover all the employees within each organization and provide for or allow for pay equity comparisons between all predominantly male and all predominantly female groups of jobs. By working through an albeit fairly complicated process, we feel there will be the most opportunity to arrive at a consensus between the bargaining agents and the employers as we move through an organization and broaden the scope for comparison in each instance.

Unfortunately, it has led to a fairly complicated section 11 of the bill, which is the section that provides for the flow of the one per cent between the separate pay equity plans within each organization. If you are looking for the reason that section 11 is so complicated, it is that we have to keep the one per cent of money flowing and allocated to the respective bargaining pay units.

Now back to the pay equity plans and what they comprise.

Hon. Mr. Wrye: This is where we get into the heart of the complexity that Evelyn was worried about. We had a flow chart on the time lines in all this, which perhaps we should share with the committee. It would be useful in showing you that the second and third stages will go on even as the payouts are occurring in the early stages. In other words, the payouts will have begun. It is not a matter where one will happen and then everything will go forward, and then at the end of that stage we will say, "Let us start on the cross-bargaining unit comparisons."

Ms. Gigantes: Can we get a copy of the flow chart?

Hon. Mr. Wrye: Yes. I think we have one here.

Dr. McAllister: I have some but not enough copies for everyone.

Hon. Mr. Wrye: We will get one for the committee after lunch. It would be useful--

Ms. Gigantes: We could probably get it right now if the clerk would--

Hon. Mr. Wrye: I found it useful. It will show how this matter will go forward, and I think it will be very useful. I am going to draw on some of my own experiences in getting explanations as we go through it, because I do not pretend to be an expert. I am a lot more expert now on the detail of this, but it may be useful, Heather, for you to explain to the committee at this stage why we have gone through the one, two and three and why you cannot just jump to stage 3 and take it through that; why you cannot do it all at once and why that would delay things for a decade.

Dr. McAllister: There is not a great interest in having delay.

I think the minister is asking why we have three, four or five pay equity plans developed within each organization; especially where we have two

bargaining agents, why do we not simply start off with one comprehensive pay equity plan.

In the Ontario public service which is covered by this bill the level of unionization is approximately 80 per cent. It varies within each organization. If one were to move automatically to a comprehensive pay equity plan, there would be a couple of impacts that would flow from this.

First, it would mean there would be the difficulty of how one would work out the relationship between bargaining agents within an organization and employees who have no representatives within the organization, in terms of arriving at some consensus in a one-shot approach to implementing pay equity.

Second, it would mean that within bargaining units, and especially within separate bargaining units within an organization, one would not have provided for the opportunity for the parties who normally deal with pay and classification issues in collective bargaining to take their best shots at establishing pay equity within that bargaining unit, where there are very definitely specific types of pay and classification relationships. So you would have lost a great opportunity to work through in a consensual approach within an organization in terms of coverage of your pay equity plans.

It would also mean there would be much greater difficulties in terms of the time limits that would be reasonable to expect the parties to work towards in terms of developing a pay equity plan, so that the first payouts would have been more delayed if the first payouts relate to more narrow pay units--or at least pay units where, for example, there are already existing relationships in terms of collective bargaining or where the employer already alone develops and implements the pay and classification system without bargaining relationships for the management employees.

It would have meant that this time lag would have had to be more extensive.

Ms. Gigantes: I have a number a questions that flow out of this area of discussion, but I would be happy to get the overview and then come back.

The Acting Chairman: Is that the idea, for you to present your statement and then to open it up for questions from the committee?

Hon. Mr. Wrye: I am sorry, I probably should not have cut in, but you raised it so specifically that I assumed that was the area--

Dr. McAllister: As I have indicated, within an organization with two bargaining units, conceivably you could end up with five pay equity plans, but in those organizations with only one unit you would have four.

Each pay equity plan will provide, first of all, for the development or selection of a job comparison or evaluation system. As I mentioned already, where the pay equity plan applies to bargaining unit employees, the selection or development of the job comparison or evaluation system will be negotiated.

This is an important feature because, as I have said, it allows the parties--who have to live with the implications of pay equity programs in terms of the rest of the classification and pay system--to work in a consensual way to finding a means of comparing jobs in terms of value which we hope they can agree to and which will be satisfactory.

Each pay equity plan will provide for the identification of predominantly male and predominantly female groups of jobs. As I have noted, in the legislation, there are basic standards for automatic inclusion of male and female groups; 60 per cent for female groups and 70 per cent for male groups. However, through the bargaining process, for example, other groups can be included in pay equity plans.

The pay equity plans will also provide for a method of applying the job comparison or evaluation system and will also provide for the adjustment of rates of compensation to redress inequities that may be identified by the application of the job evaluation or comparison system.

11:20

As I mentioned in my discussion about the Pay Equity Commission, it will review the pay equity plans which will be filed with it and it will monitor the implementation of the pay equity plans, for example, in terms of ensuring that the job audits required to measure the relative value of jobs are undertaken in an expeditious manner.

While we build on the strengths of the collective bargaining process, we have also provided for arbitration where collective bargaining is frustrated. We have provided for very speedy arbitration. If an arbitrator cannot arrive at a resolution of a problem within three months, the minister may appoint a second arbitrator to look into the matter and resolve it.

I will mention briefly the one per cent of payroll requirement. There is nothing that prohibits an employer from paying more than one per cent of payroll towards the redress of pay inequities, but the one per cent per year seems to be a sort of standard provision. Manitoba has adopted it and it flows from the efforts of the state of Minnesota. That amount will flow until the proactive pay equity plans have been fully implemented and all the adjustments that have been identified as required have been made. That will take us into four or, possibly, five years.

As the minister noted at the end of his speech, because there is a one per cent requirement of the previous year's payroll and because we are going to be two years into the process before the first adjustments are flowing, two per cent of payroll will be available for the first pay equity adjustments.

We have calculated that there is about a gap of four per cent of total payroll to be redressed in the Ontario public service. This means we have about half the money that is going to be required 24 months or two years into the process beginning to flow. Although there is that two-year delay, we will be able to provide a very speedy redress for a significant part of the total pay inequity.

Because these first pay equity plans will cover fairly large units within each employer's organization, we will have two per cent of payroll to put towards those right away. In the case of the civil service, we will have all of the Ontario Public Service Employees Union covered by the first pay equity plan which will have identified inequities and the redress required at the two-year mark.

The total cost of the program at four per cent of total payroll will be approximately \$88 million. Building in a slight inflationary factor, that is about \$22 million over the proactive period and an ongoing cost of \$88 million.

Mr. Gillies: Can I ask for clarification, Dr. McAllister? Let us use the immediate public service as an example. Would each ministry be required to bank and then produce at the given time the one per cent or would this be done on a general basis under the consolidated revenue fund?

Dr. McAllister: It will be the consolidated revenue fund, given that pay inequities will be identified across ministries. For example, in the case of bargaining unit employees, all the unionized employees who work for all the ministries of the government of Ontario, no matter what they do, will be in the first pay equity plan and they are here, there and everywhere. The funding mechanism for this is the consolidated revenue fund. It makes sense that it be done in that fashion.

Mr. Gillies: Thank you.

Dr. McAllister: Those are essentially the main features of the program. We welcome and will entertain any questions you may have about some of the specific provisions as well.

Mr. Gillies: There are so many questions and the questions will lead to more questions, but let me try one right off the bat. Can you explain to us, perhaps in greater detail, the gender-predominance feature of the bill, the effects that has and the proportion of the public service that you expect will be adjudicated properly with that provision in and conversely, because I believe there are examples of those who would be left out because of the provision?

Dr. McAllister: Taking the gender-predominant standards of 60 per cent and 70 per cent and looking at the Ontario civil service and the agencies that are covered, we have identified approximately 29,000 out of 78,000 employees as falling within the predominantly female group of jobs within the Ontario public service. Presumably, there will be redress available should pay inequities be identified for those groups of jobs.

Perhaps I should step back and answer the larger question you are asking, which is why we have standards for gender predominance at all. I would go back to my introductory remarks. We see the purpose of pay equity as to provide redress for gender discrimination in pay, which means you need some mechanism for identifying jobs where gender bias would have been a factor in the assignment of rates of pay to the jobs. If you are not looking for gender bias, it does not make any sense to try to look for jobs that either have been traditionally filled by women or are at present filled by women. You need an approach for getting at the information.

I can tell you have something to say, but I will continue for one minute.

You have also raised the concern that certain groups might be excluded by the gender standards. We have provided means in the bill to include other groups in pay equity plans, through the collective bargaining process, by designation by the employer with the approval of the Civil Service Commission and so on.

In the instance in which there is a predominantly female group of jobs that upon the effective date has slipped to only 59 per cent gender predominance, whereas it used to be 60 per cent, so that it would not be automatically included, the parties, the commission and the employer can look at the group of jobs and consider whether it really should be included because the rates of pay for the jobs have not changed, even though perhaps it does

not quite slip into the program under the automatic inclusion provision of the legislation.

Mr. Gillies: Do you have a figure you could give us on the total number of women of the 76,000 employees? I know it is 24,000 out of the 29,000.

Dr. McAllister: About 41.5 per cent of employees in the public service are female.

Hon. Mr. Wrye: I am looking. It is 31,909 females; 32,000, rounding it off. This legislation will catch three out of four of them. The reason it catches such a large number is that the level of female predominance is the lowest in any jurisdiction. That number would be a lot lower--those who would be caught--if we had gone with the Manitoba model of 70 per cent.

Dr. McAllister: I should note that in choosing 60 per cent we looked at the impact with respect to numbers, but we also looked at particular groups of jobs which, at the point the legislation was being developed, would or would not be included. It made a lot of sense in terms of not only getting extra numbers into the program but also getting some groups it seemed very desirable to have included automatically.

Ms. Gigantes: Since you have looked at it group by group, can you give us a list of the groups, roughly speaking, that will be included in the 8,000 who are not covered effectively by the bill?

Dr. McAllister: Okay. I would like to throw out a caution with doing that and the discussions about particular groups of jobs. The data we use now will not be the same data that is used when the bill becomes effective and people are looking at pay equity plans. When one looks at data from September 1986, one should realize that they may be different data than are used at a particular point. In terms of saying a group is automatically in or out, one cannot necessarily read that into the data, unless, for example, it is a 90 per cent female group, in which case you would not expect that the gender predominance would change. I want to throw that out as a caution.

Ms. Gigantes: If you have data on an updated basis, it might be useful to be able to look at them in February and in September. You drafted the bill with some data at hand.

11:30

Hon. Mr. Wrye: We can provide that, but this goes to the heart of what pay equity is all about. Others put it from the public service perspective and I will put it from the political perspective that, if my friend from Brantford wishes to start giving pay equity without any threshold level, any floor level of 60 per cent female predominant, the first amendment he is going to have to move is an amendment to subsection 3(1). He is going to have to change the purpose of what pay equity is about. It is to redress systemic discrimination on the basis of sex.

Ms. Gigantes: Now we are getting into an argument.

Hon. Mr. Wrye: I just raise that caution. I understand we are getting into an argument, but it should be understood at the outset that this would throw the baby out with the bath water.

Dr. Wolfson: If I might clarify a response to Ms. Gigantes's question about which women would not be included, given the 60 per cent threshold, it turns out that almost all employees in the public service are either in predominantly female groups of jobs or predominantly male groups of jobs. A very small proportion is in the mixed category that falls neither in the 60 per cent or more female or the 70 per cent or more male. The 8,000 women who are not in the predominantly female groups of jobs are overwhelmingly in the predominantly male groups of jobs. They are sprinkled through those jobs. We can certainly provide the distribution of those women, but you will find them overwhelmingly in traditionally male jobs.

Ms. Gigantes: More by definition.

Dr. Wolfson: By definition, and therefore receiving the rates of pay that the traditionally male jobs have received. As the minister says, the underlying premise here is that we are trying to get at the undervaluation of women's work. In so doing, there has to be a definition of what women's work means, and that is the basis on which we are trying to identify gender predominance.

Mr. Gillies: Perhaps to complete this little set of statistics, we could get a figure on the number of the 8,000 in the 70 per cent plus male-dominated positions and then the number who fall between the two categories. That would be helpful.

Ms. Gigantes: While we are digging up statistics, can we also know how many employers will be covered under this bill?

Dr. McAllister: Yes. There are six agencies and the Civil Service Commission.

Ms. Gigantes: That means seven employers.

Dr. McAllister: As I mentioned, two of the employers will be treated as one, the Liquor Control Board of Ontario and the Liquor Licence Board of Ontario.

Ms. Gigantes: With any one employer what is the maximum number of bargaining units?

Dr. McAllister: Two. Ontario Housing Corp. and the Civil Service Commission have two bargaining agents each.

Ms. Gigantes: Where did the figure five as a maximum number come from?

Dr. McAllister: There would be two separate bargaining unit plans, one management pay unit plan, one combined bargaining unit plan and one comprehensive pay equity plan in an organization with two bargaining agents.

Ms. Gigantes: How many women who are nonunionized will be caught up in the 75 per cent of the public service? First of all, how many nonunionized women are there? I think you said that 80 per cent of the public service was unionized. Can you break that down in terms of male and female? I am wondering how many of the nonunionized public service female employees will be covered by the provisions of this bill as it now stands.

Dr. McAllister: You mean how many are in predominantly female groups of jobs?

Ms. Gigantes: Yes. My other question is broader, and I am sure it probably is not too hard. You may have the figures available. There is constant reference here in Ontario to Manitoba and Minnesota. I want to know the percentage of female employees in Minnesota and the percentage of female employees in Manitoba who are covered by legislation.

Hon. Mr. Wrye: In other words, 75 per cent in Ontario whom this legislation would catch, 75 per cent--

Ms. Gigantes: No. This legislation will catch 1.5 per cent.

Hon. Mr. Wrye: Oh. What percentage of the--

Ms. Gigantes: The total female employment in Minnesota caught by their legislation and similar figures for Manitoba.

Hon. Mr. Wrye: We will break that down into each phase of the legislation. It will be very helpful.

Mr. Chairman: By way of extension to that, Ms. Gigantes, it would be helpful as well if we had some indication of the phasing that would follow.

Ms. Gigantes: That is just what the minister suggested.

The other figure I would like to have, which would allow us a kind of overview of where this legislation is comparable or not comparable to that in Manitoba and Minnesota, is the number of employees who would be considered public service employees or public sector employees as a proportion of total employment in Manitoba and Minnesota.

The other matter that arises from Dr. McAllister's outline for us is the reference to total payroll. The one per cent of total payroll is related to the bargaining unit. Correct?

Dr. McAllister: No. It is all payroll. You are partially correct. In the first phase, for each bargaining unit pay equity plan and management unit, if I may use the term "pay equity plan," one per cent of the payroll for each of those pay units will be put towards the pay equity adjustments. That is totally because all of those plans will have to be developed. Plans will be developed covering all employees in the first phase of the proactive program.

Ms. Gigantes: Yes.

Dr. McAllister: One per cent of the total payroll for the employer will be put towards pay equity adjustments. It is divided, if you like, proportionally according to the employees covered by each pay equity plan up until you get to the comprehensive pay equity plan, in which instance it is one per cent of all the payroll for all of the employees.

Ms. Gigantes: Therefore, in the first period, when you have your two rounds of up to 24 months of pay equity plan establishment going on, you are not really talking about two per cent of total payroll.

Dr. McAllister: Yes, you are, because one per cent of payroll for the management employees is also, if you like, being theoretically banked by this bill to be put towards the adjustments.

Dr. Wolfson: If I might try, in the first phase we have separate plans being developed and applied for each of the bargaining units and the excluded personnel. The one per cent of payroll will apply within those plans to the entire payroll of those three separate units, as Dr. McAllister has indicated. The sum total of those one per cents is identical to one per cent of the total payroll of the organization.

Therefore, in the first phase you have one per cent of total payroll committed to those separate pay equity plans. Then when you go into the second and third phases to go across bargaining units and eventually across the entire organization, you are dealing with the same one per cent, but you are not slicing it three ways or two ways.

Ms. Gigantes: I wonder whether it would be possible for you to prepare an example for us so that we know what we are talking about, for example, with the public service commission, when you do that, and how much payroll gets allocated to each of the first two steps in the planning process. I am just curious about that.

Mr. Chairman: Is that all, Ms. Gigantes?

Ms. Gigantes: No. There was one other question, which arises out of what Mr. Gillies was discussing. If you have looked at various levels of qualification for predominance in a category, and you have presumably looked at 70 per cent, 60 per cent and 50 per cent--do you have a 50 per cent figure you can give us?--I note, and I am certainly not alone in noting that as unemployment has grown, the number of males who have entered what was traditionally female work has grown. I think of the famous switchboard operator at Queen's Park. I wonder whether our switchboard operators are predominantly female any more and whether they will be left in for purposes of this plan.

11:40

Dr. McAllister: Whether they will be automatically included? Yes.

Mr. Chairman: Are there any further questions?

Mr. Gillies: Perhaps I will ask another one on the question of sanctions. I will ask whether the opinions of the minister and his officials have changed on the necessity of sanctions. What is the rationale behind the position you have?

Hon. Mr. Wrye: You referred in your statement to the fact that, on the basis of your view that this legislation should be widened, sanctions now become appropriate. I think you answered your own question in suggesting that they are not appropriate or necessary, given the present coverage the government as an employer tends to perceive.

Mr. Gillies: Fair enough. I wondered whether there was any other rationale.

Dr. McAllister: I would like a clarification on your question. Are you asking whether the orders of the commission are enforceable or are you inquiring why we do not provide fines?

Mr. Gillies: Perhaps you can expand on that. I think those are two separate questions, because presumably there are with the narrow public service other mechanisms, apart from fines, you can employ to ensure enforcement.

Dr. McAllister: Presumably, one can use moral suasion.

Mr. Gillies: There is a lot of clout in the consolidated revenue fund.

Dr. McAllister: Yes. In this bill, which covers the male public service, we also provide that the Pay Equity Commission can order employers to do whatever is required to provide pay equity should pay equity plans, as they may be developed or negotiated, not quite meet that standard or should adjustments not flow as required by those plans. It appears that to be in contempt of an order of the Supreme Court of Ontario leaves one as an employer in a rather serious situation. Ultimately, that is a fairly strong enforcement mechanism.

Mr. Callahan: It is jail instead of a fine.

Dr. McAllister: It was put to me by a lawyer that, to be in contempt of an order of the Supreme Court of Ontario, one can risk losing one's first-born child. It is a matter to be taken rather seriously.

Mr. Gillies: Okay. I have one other question. I know we do not want to get into any detailed questions on amendments yet, because we have not all had a chance to digest or even look at them. I wonder whether we can talk for a minute about your mention in your statement of an amendment regarding monitoring, what your proposed change is and where we may find it in the material we have been given.

Dr. McAllister: Yes. Have a look at your index.

Mr. Gillies: Okay. I have it now.

Dr. McAllister: I will refer you first to the proposed amendment, subsection 20(6), which is a new subsection. That is perhaps one of the most relevant changes to the bill.

Mr. Gillies: Just a second. That is on page--

Dr. McAllister: Page 22.

Mr. Gillies: Subsections 20(5) and 20(6)?

Dr. McAllister: This proposed amendment to the bill would require an annual reporting by the employer to the Pay Equity Commission ensuring that adjustments to rates of compensation are being made and describing the process of implementation by the employer to date. In other words, we put in a monitoring function during the proactive period by the Pay Equity Commission.

Copies of those reports would also be made available to employees and bargaining agents for their inspection.

With regard to an improved monitoring function of the commission, I would also refer you to page 17 and the proposed amendment to subsection 19(1). The previous wording in the bill had left the Pay Equity Commission out of the monitoring process while pay equity plans were being prepared, and you will recall that there is a particular number of months allotted for the different pay equity plans during which time they are to be prepared, developed, selected, whatever. We now have a role for the commission to take a more proactive role during that period when the parties in bargaining--or the employer alone--are supposed to be working on the development or selection of job evaluation, comparison systems, identifying predominantly male and predominantly female groups of jobs, etc.

Ms. Gigantes: The urging function.

Dr. McAllister: That is right. We have just opened the door for them to become involved--

Ms. Gigantes: Nag, nag, nag.

Dr. McAllister: --in a monitoring way from the very beginning. The proposed amendment on page 19, which is clause 19(2)(g), continues in that vein. Therefore, those are complementary.

Hon. Mr. Wrye: We have the audits where we make the material available for inspections.

Dr. McAllister: That is a slightly different matter. Along with an increased monitoring function of the commission, we also have a number of amendments which require the production and availability of materials that will be necessary in the development of pay equity plans. For example, subsection 11(10), which is a new subsection, will make available the results of the job audits, which will indicate what adjustments might be required to rates of compensation. We had quite inadvertently left that out as being required to be filed anywhere. Now the union and employees will be able to look at the results of the job audits and determine whether or not they are appropriate. Previously, they did not have that information. Quite inadvertently, it was not required that it be produced.

Those are the sorts of improvements in strengthening the monitoring provisions and the latter is also an example of the more stringent requirements for the production of information and also making that information very widely and generally available to employees which should enhance their ability to participate very actively in the development and implementation of pay equity plans.

Mr. Gillies: I am just looking for something which may be here--I apologize--something that speaks to monitoring in the post-adjustment period. In other words, the concern I raise is that over a period of time there could be an erosion of gains made by pay equity. Will somebody at the commission be empowered to keep an eye on this over the years as opposed to just during the two-year to four-year period?

Dr. McAllister: No, the present bill shifts the onus to employees following the completion of the proactive phase in terms of laying complaints with the Pay Equity Commission about pay inequities.

Mr. Gillies: Okay.

Mr. Chairman: The minister has indicated that he wants to get away by about 11:55. I suggest we break at that point. We have about five or six minutes for further questions before that logical cutoff point, if you will.

Mr. Callahan: I would like to ask a question since I am only filling in and may not be back again. Subsection 22(1) gives the commission the exclusive jurisdiction to determine all questions of fact and law.

Is there any difficulty with that in reference to the commission, not being federally appointed judges, in terms of determining questions of law?

Dr. McAllister: Not that we are aware of.

Mr. Callahan: No? I can only make an analogy to the difficulties that assessment commissioners had, historically, of determining anything more than questions of fact, and the arguments that revolved around that as to whether or not they were section 96 judges, and it was a jurisdiction only the federal government could put forward.

Dr. Wolfson: I would defer to our lawyer, but many administrative tribunals, such as the Ontario Labour Relations Board and the Workers' Compensation Board, are charged with interpreting matters of fact and law, with these kinds of provisions in them. I believe they are called privative clauses.

Anyone can, of course, seek judicial review, if one believes that the tribunal has exceeded its jurisdiction, so at that point the court system does intervene. So long as there is no excessive jurisdiction and the tribunal is administering under statute, I do not believe it creates a section 96 problem.

We might ask Ms. Silk Klein to comment.

Ms. Silk Klein: I am Suzanne Silk Klein, from the Ministry of Labour, policy branch. There are, as Dr. Wolfson suggested, any number of administrative tribunals which have similar privative clauses. The courts accede to the specialized understanding and knowledge of such tribunals particularly in labour and employment matters, but can intervene if the tribunal exceeds its jurisdiction and most particularly if the determination of fact or law by such a tribunal is what the Supreme Court of Canada has called "patently unreasonable."

That is a rather fluid term but in general it has got to be pretty obvious. It is a very standard kind of clause in labour relations.

Mr. Callahan: I was not referring to the question of the exclusive jurisdiction being given to them. I was relating to the question of whether or not a nonfederally appointed judge can make determinations of law. If you go back to the assessment cases where commissioners of assessment made rulings on law, it was ruled they could not do it. At that time, it had to be done by district court or a county court judge, because he was a federally appointed judge. I just offer it to you, maybe to look into it.

Ms. Silk Klein: I am not aware of the statute under which these assessors operate. The fact is that provincially appointed judges make determinations all the time in the provincial courts, and provincially appointed tribunals make formal determinations of law when their empowering statutes so give them the power. The question of the federally appointed judges does not seem to arise there.

Mr. Chairman: With the acquiescence of the committee, we can break at this point to comply with the minister's time frame. We are actually getting out some minutes early, which shows you the type of co-operation you will get from this committee, sir.

The committee adjourned at 11:56 a.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

WEDNESDAY, SEPTEMBER 24, 1986

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

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Partington, P. (Brock PC)

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Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Callahan, R. V. (Brampton L) for Ms. Hart

Dean, G. H. (Wentworth PC) for Ms. Fish

Gillies, P. A. (Brantford PC) for Mr. Brandt

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

Poirier, J. (Prescott-Russell L) for Mr. Offer

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Clerk pro tem: Arnott, D.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Silk Klein, S., Policy Advisor, Labour Policy and Programs

From the Confederation of Ontario University Staff Associations:

Trainer, S., Executive Secretary

Harte, C.

Okada, N.

Meagher, S.

Individual Presentations:

Smart, J.

Lalumiere, R.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, September 24, 1986

The committee met at 10:09 a.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting-Chairman (Mr. Partington): This is the first day of receiving submissions with respect to Bill 105. The first presentation will be made by the Confederation of Ontario University Staff Associations. Perhaps those representatives can come forward and sit in the seats in front.

Welcome to the hearing. Perhaps you can identify yourselves at the outset.

CONFEDERATION OF ONTARIO UNIVERSITY STAFF ASSOCIATIONS

Ms. Trainer: Some of the names here have been changed to protect the innocent. I am Sheila Trainer. I am a clerical worker at the University of Guelph and I am the executive secretary of the Confederation of Ontario University Staff Associations.

Mr. Meagher: I am Sean Meagher. I am a researcher for the University of Toronto Staff Association.

Ms. Okada: My name is Nancy Okada. I am a member of the University of Toronto Staff Association.

Ms. Harte: I am Celia Harte. I am president of the York University Staff Association.

The Acting Chairman: Just to outline the procedure, you will make your presentation to us. There is an hour for you to make your presentation and to receive questions from members of the committee, who I am sure will have many questions to ask you. You can carry on with your presentation, and then I hope there will be time for the committee to ask you questions afterwards.

Ms.-Trainer: Thank you. Mr. Brandt could not be here?

The Acting Chairman: Mr. Brandt will be away for the next two or three weeks on legislative business. That is why he is not here this morning.

Ms. Trainer: Thank you. We represent about 10,000 workers in the Ontario university system and our membership covers a very wide range of occupations. The ratio of male to female is about two thirds female to one third male, and this why we are very interested in any legislation around equal value.

We are a member group of the Equal Pay Coalition and endorse its position on Bill 105. We also work co-operatively with the Ontario Federation of Labour and support its position. We commend both the coalition and the OFL for their sterling work and ongoing commitment to the women of this province.

We do not intend to rewrite Bill 105, but that should be done by somebody. The bill is unwieldy and incomprehensible and should be dramatically amended before a final reading in the House. We will, however, touch on one or two points that we feel are of particular importance to us as a confederation of university workers.

While we realize that one massive piece of legislation covering all sectors in the province might not come from Bill 105, we feel very strongly that, failing that, the bill should cover, after amendments, all workers covered by the 1982 and 1983 wage restraint legislation. Even with small percentage salary increases under that legislation, the wage gaps between men and women on university campuses in this province widened alarmingly, by thousands of dollars in some cases. Therefore, the expansion of Bill 105 to the expanded public sector would be the least we would expect from this government, which has made a commitment to the women of this province on equal value legislation. We repeat, all workers should be covered, now or later.

The bill should clearly state that it is illegal for any employer in Ontario to pay unequal wages. Women and men should be treated equally when they are working equally. Nowhere does the bill state that men should have redress for unequal wages. "All workers" means exactly that. Government, public sector and private sector workers should all have legislation protecting them from exploitation.

Since all universities receive the bulk of their operating funds directly from the province, we feel that "establishment" should cover all workers within the university system in Ontario for any legislation around equal value in our jurisdiction. There should be no exclusions for reasons of part-time work, seasonal work, casual or temporary employment. These sectors are discriminated against on all fronts. Most have lower wage rates than full-time workers and few or no benefits, making these sectors very attractive for the employer to expand this work force and endanger full-time jobs.

Because we have waited many years for fair treatment for women and men in our work force, we feel there should be retroactivity, ideally back to the date of the throne speech, but certainly back to the date of first reading. It is widely felt that the throne speech made a very clear commitment to equal value legislation.

As university support staff, we have lobbied government for many years on the effect of underfunding the post-secondary education system. We deal with the effect of insufficient funds every day. Therefore, before we can enact equal value pay on our campuses, someone must fund it. Since the government has demonstrated quite clearly its commitment to rectifying the inequities of past administrations, the government of Ontario must transfer the cost of implementing equal value pay to each university, continue transfers specifically earmarked for this purpose until the imbalances are corrected, and then continue to fund at a level to maintain it.

In the light of the above funding recommendation, it then follows that the government must monitor the use of these funds and require some reporting mechanism from the university administrations. Failure to comply should be met

with strict penalties, perhaps along the lines of the federal action around the withholding of transfer payments when doctors were allowed to extra bill and clearly contravened the Canada Health Act. No penalties means no compliance.

There should be no red-circling of male wages by the employer. We do not wish to pit women against men workers. We merely wish to rectify the past injustices to women and certainly to some men in our numbers who quite clearly are being paid unequally.

We object strenuously to the lowest male rate being used when comparisons are made. If the evaluation of each job is fair, there should be no need for any such ruling. Compare jobs, not genders.

The length of time for any plan to be put in place is far too long for workers to wait for justice. We want a speedier resolution to pay inequities than is set out in Bill 105. We feel that it is possible to come up with a plan for a work place and have it in place within 18 months. In the meantime, we would like to see some immediate redress for workers until the fine-tuning is complete.

If you recollect, under the Anti-Inflation Board, this massive bureaucracy was set in place with little or no trouble at all. When the government wants to do something, it can do it. We are looking to you for this type of action.

Any workers not covered under a bargaining unit should be treated as if they were part of the unit for the purposes of pay equity. Our members are both unionized and nonunionized and work side by side at similar occupations. Again, all workers should be treated equally.

There should be no delay while any complaint is investigated. When a pay equity plan is arrived at after negotiations with the university administration and the groups of workers, it should be put in place then and complaints dealt with afterwards.

There should be no reprisals against any worker laying a complaint, just as there is around union activity. It should be the right of any worker to complain if he or she is being treated unequally and unjustly without fear of reprisal.

In closing, we would like to restate our position on the pay equity hearings held earlier this year. They served merely as a further delaying tactic and served no useful purpose. We are sure the government is well aware of the views held by the various jurisdictions on the subject of pay equity. The hearings merely wasted \$90,000 that could have been used towards pay equity. If the members of this committee and indeed any member of the House is in doubt of how strong the feelings run on this topic, then we must respectfully and regretfully conclude that they have not been paying the slightest attention to the women of this province.

We know that voluntary affirmative action did not work. We need strong legislation around equal value with monitoring and reporting mechanisms built in and heavy penalties for noncompliance. It should trouble the elected members of the Ontario government that this province and this country are not honouring the binding commitment made in their name to the International Labour Organization's Convention 100. On a personal note, I brought my children up in the belief that a promise was a promise and unbreakable.

To conclude, I also remind the members of the committee that more money in the hands of women in this province means a stimulated economy and a brighter future for the older women facing retirement on less than the poverty level pension incomes.

I also have a letter from McMaster University Staff Association, which hoped to be here today, but September is a particularly bad month for university staff to get away. They have just written: "To whom it may concern: We, the McMaster University Staff Association, wish to express our support for COUSA's stand on pay equity, specifically the criticism that the current legislation applies only to the public service."

"Although we endorse the response of the Equal Pay Coalition to the green paper, we would like to point out that women employed in Ontario's universities are twice as likely as men to make less than \$25,000 per year and only one thirteenth as likely as men to be making more than \$45,000 per year."

"Underfunding of universities means that even when the need for equity is recognized, it will be hard to achieve. Legislation must provide for financing to make it possible to establish pay equity."

"The McMaster University Staff Association recommends that the only allowable basis for exemption from pay equity should be seniority. Merit and market value should not be bases for exemption." It is signed by the president of MUSA."

The Acting Chairman: Thank you. Would any other representatives like to speak at this time?

Ms. Harte: I just have one thing to point out. The other concern that many of us share is that the bill, in effect, is a one-time-only pay adjustment. There is no provision for future gender-predominant groups to be looked at, besides the fact that we all have problems with the 60 per cent and 70 per cent number ceilings, or whatever they are called--floors. It does not address future inequity; so there is no way in which to bring in other groups that may become distributed in that way. It is only from the effective date, and there is nothing to do in future. It is a one-time-only shot.

10:20

Ms. Okada: We are here primarily to support the Confederation of Ontario University Staff Associations. I just mention that we will also be making our own presentation next week; so I will reserve my comments until that time.

The Acting-Chairman: Mr. Gillies, do you have a question?

Mr. Gillies: It is a very good brief and we thank you for it. I just have three or four questions arising out of it.

Our party announced yesterday that we would be supporting extension of the bill into the university sector and other sectors somewhat, if you will, at arm's length from the immediate civil service. In so doing, the minister made some comments which I would like to try on you and get your reaction.

First, you mentioned gender predominance. My suggestion, which I believe is supported by the New Democratic Party, is that the 60 per cent and 70 per

cent thresholds are not necessary. You could compare jobs without those thresholds. The minister's response was that this, in his view, would frustrate it. It would, in a sense, negate the purpose of pay equity. I wonder if I could get your reaction on that difference of opinion.

Ms. Trainer: Having dealt with the university administration for a number of years, I am perfectly sure that any employer could skew occupations to meet with 59 per cent and 69 per cent, if he so wished. The whole point of my brief is that equal is equal. There is no such thing as almost equal or nearly equal, like almost pregnant or nearly pregnant. You are either equal or you are not equal.

Mr. Gillies: Right. I take it from your brief that if pay equity were to be structured such that a case arose from time to time of a man whose wages were not in accordance with a female predominant group, that does not offend you at all.

Ms. Trainer: No.

Mr. Gillies: If an adjustment were to be made under the legislation.

Ms. Trainer: No.

Mr. Gillies: I just comment on the second page. I quite agree with you; there should be a statement in the bill that makes it very clear that the payment of unequal wages is illegal, if we could get that.

On the third page of your brief, you talk about the funding mechanism, your suggestion being that the government should transfer the cost of implementation to each university. Each institution should be specifically earmarked and then the imbalances corrected from time to time.

The minister said yesterday--now, mind you, we are dealing in his view with a smaller universe, if you will, for implementation--that there would be a specific fund under the consolidated revenue fund and that the funds per ministry would not be transferred for implementation of this plan, but rather would come right out of the consolidated revenue fund.

Do you believe, if this is the law, that transferring the funds to all of the institutions will ensure fair and equitable delivery of such funds across the province? Do you have any doubt or any concern that all of the institutions covered will not wish to work fully towards implementation; or would you feel more comfortable with some sort of central agency delivering the funds?

Ms. Trainer: I would feel more comfortable with a piece of legislation that states, "No employer may pay unequal wages," first, because that would mean the universities, my employer, would be in direct violation of the law and therefore any money transferred should be earmarked specifically so it cannot just disappear into the general operating funds. The use that is made of this money should be reported on. No, I would not be happy with a central agency. I would prefer the moneys to go to each university, but it should be monitored and reported on and they should be made accountable for the proper use of that money to make sure it goes where it should.

Mr. Gillies: Fair enough. I have a final question. I find most interesting your comment on page 4 about the nature of the work force in your area, being both unionized and nonunionized. In response to our announcement

yesterday of the intended amendments, it is reported in the Toronto Star this morning that one of the problems the minister saw with our proposed plan is that it would be unworkable, that "it would mean having to deal with government agencies that employ nonunion people, and the equal pay provisions are designed to be negotiated with labour unions representing government employees." A sector such as yours has both. Do you think that is a real problem?

Ms. Trainer: It should not be. We negotiate. For instance, COUSA is made up half of unionized groups and half of nonunionized groups, whichever form unionization takes. We are about 50:50. Within our unionized groups we have workers working in the same jobs side by side with people who by virtue of their job titles are exempt from our union, not by their wish. Their working conditions, salary levels, benefits and holidays are all identical to those of the workers in our union with one minor exception, sick leave.

It would be only fair to afford equal treatment to my nonunionized co-workers. We work together. We work for the university. We do the same jobs. I know my union president would have no objection to having exempt staff and professional staff included in anything we negotiated with the university. We find that has been past practice anyway and it would not pose a problem on our campus. Would it pose a problem at York?

Ms. Harte: I do not see why it should be a problem. The problem is the way in which the bill is drafted, the different stages it has to go through, that first you do something in a bargaining unit and then across bargaining units. At York, we have eight bargaining units now, and then there are all the groups that are not bargaining unit groups that are going to have to be brought in. This three-step co-ordination process in the bill is a problem. I do not think it is a problem for different institutions and establishments to come to agreement and negotiate a process, whether it is through formal union negotiations or not. As long as there is a mechanism to safeguard it, there should not be a problem at all.

Mr. Gillies: In a nutshell, it has not been problem in the past and there should not be a problem in the implementation of this.

Ms. Gigantes: I want to continue on the same line Mr. Gillies has raised because we have had a lot of worry lines produced by the minister when we talk about extension of the bill, how it is going to disrupt totally the mechanism that has been so sensitively created for public servants in Ontario. At the same time, he told us the bill will cover nonunionized personnel within the public service. I personally have difficulty understanding the concern. If you had to take this bill as it now is written and work with it in your work setting, do you see that it would be absolutely out of the question to apply even this complex and convoluted kind of structure?

Ms. Trainer: I would not want to apply Bill 105 in its present form in my work place.

Ms. Gigantes: Probably most public servants, people who are directly in the Ontario public service, would feel the same way. Is there anything that you can identify for us in your work setting that you think would be different from the situation in the public service of Ontario as far as you are familiar with it? Would it be any worse in a university setting than it might be for the Toronto Transit Commission?

Ms. Trainer: No.

Ms. Gigantes: Not that you can see. We should all tell the minister not to worry, that even if his bill passed unamended, it would be better than nothing as far as you are concerned.

10:30

Ms. Trainer: No, I would not agree with that. I would not want to see the bill passed unamended.

Ms. Gigantes: Good. When you look at working conditions at the university, do you see them as one of the reasons for differences in pay? For example, are there people who look after boilers and work in heat and dust and people who work in outside maintenance and are usually men, and is this one of the reasons given for unequal pay in your experience?

Ms. Trainer: It certainly is on our campus. There is a \$105-per-week wage gap between an agricultural assistant and a secretary, and the qualifications for an agricultural assistant are far below those for a secretary.

Ms. Gigantes: At your campus or in general in your organization, do you know roughly the spread of female-male workers?

Ms. Trainer: I know on our campus in our union it is about 550 women out of 850 total membership. That is just one unit.

Ms. Gigantes: You talked too about the need to help the bill cover unequal pay for equal-valued work, whether that work is performed by a man or a woman. Can you think of examples at your university?

Ms. Harte: One of our concerns with the current legislation is we could end up being compared to the security guards. The security guards are generally very badly paid, I understand, and also definitely at York, they are paid less than any of the people in my bargaining unit.

Ms. Gigantes: What is your bargaining unit? Who is represented?

Ms. Harte: More than 1,000 clerical, library, technical and computer service workers. We are everything but the maintenance: professional, managerial, academic, operating engineers and guards.

Ms. Gigantes: Why would you be compared to guards?

Ms. Harte: They would be one of the male-predominant groups that might be used as a comparison. If it worked out through whatever system became implemented within a job evaluation scheme that they somehow could be compared to one of the ones in our groups that turned out to be certain numbers, then they are much lower paid, and probably for other kinds of reasons.

Ms. Gigantes: The security personnel are directly employed by the university?

Ms. Harte: Yes, they are.

Ms. Gigantes: Interesting. On the question of seniority, do you have any concerns about the way seniority has worked and may continue to work, that it will be an impediment to equal pay for work of equal value?

Ms. Trainer: Not on our campus. The person with top seniority in our unit is a woman; the second one is a man; the next three or four are women. There is no problem with that in our bargaining unit.

Ms. Gigantes: So women have turned out to be the steadiest of steady.

Ms. Trainer: We are talking about 40-year employees.

Ms. Gigantes: Yes. I was curious too about the discussion you raised about the future distribution of predominantly male-predominantly female assignments. Can you give us an example of groups where you think that transfer might occur?

Ms. Harte: I am not sure where it will occur. There are just so many changes going on within the work force generally with new technology and all the rest of it that jobs are changing. Secretaries used to be male. I do not know what will happen. I just assumed there is turnover. More women are going into computers, but they are still in the bottom end of our computer series by and large. That may change, and most of our unit is female; so in that sense it is not an issue within the unit itself. I just do not know what will happen and I think to leave that possibility of redress in the future is a real problem.

Ms. Gigantes: I do not know how long your term has been at your work place, but have you noticed any change in the number of men going into what normally would be called female work groups?

Ms. Harte: I have not been around long enough. We have more men coming into our union, but that is in part because there are more people being hired in the computer area. There are certainly male secretarial workers, but very few.

Ms. Gigantes: Can you speak to that at all, Ms. Trainer. Have you noticed--

Ms. Trainer: No, I cannot think of many men in our bargaining unit who would take a female-type occupation. We have one male secretary on our campus.

Ms. Gigantes: Is that because they do not like the association or--

Ms. Trainer: They do not like the salary levels.

Ms. Gigantes: I find that an excellent brief, really hard hitting and to the point. I appreciate it.

Mr. Callahan: Thank you very much for your brief. It was excellent. It is understandable why you would be anxious to get on with it after 42 years of delay in even considering this issue. I find it interesting that Mr. Gillies is championing the cause. I trust the comments are those of his caucus as well and not just of himself.

Mr. Gillies: Bob, are you going to be this facetious all the time we are here or can we get it out of our system now?

Mr. Callahan: I think it is of some importance, Mr. Gillies.

Mr. Gillies: I do not think it is of any importance at all.

Mr. Callahan: I do.

The Acting Chairman: Can we confine ourselves to the questions?

Mr. Callahan: You refer to the question of a lack of penalty in the legislation. Yesterday we were advised that once the commission had made a finding, it became the equivalent of a Supreme Court judgement and could be enforced in the ways that a Supreme Court judgement could be enforced.

Ms. Trainer: Sorry, is this in the list of amendments which were given to me this morning?

Mr. Callahan: No, this is in the bill itself.

I am not certain whether it is clear, but a Supreme Court judgement has a very wide-ranging list of enforcement mechanisms, a fine being the least of them. But there is also the possibility of having--and one would hope it would not happen--at least as the bill is currently presented, the government put in jail for failing to comply with the terms of the judgement. Were you aware of that in the existing bill?

Ms. Trainer: No, I was not aware of that.

Mr. Callahan: What you are probably addressing is the fact that within the bill itself there is no section saying if an employer breaches the decision of the commission, he could be brought summarily before whatever judicial body and fined. That is basically what you are saying in your brief. Is that a fair statement?

Ms. Trainer: When you are talking on the level of the Supreme Court, most employers would skim over it the way I did. I did not understand that implication. I would prefer to see it spelled out, "If you do not do this, then you will have this done to you." It should be in very large, block capitals because that is what they will pay attention to, other than taking further drastic action, like hitting them over the head with something handy. You have to hammer the point home. "You must do this or these are the consequences." The Supreme Court is a little above the level of, say, small work places too.

Mr. Callahan: The only thing I am trying to say is that if you spell it out as you are suggesting, and I know what you are saying, if there were a fine--I think the maximum fine a provincial body can put forward is \$1,000 or \$2,000; perhaps it is more--that may be a very dramatic statement in a bill, but it is saying that it becomes a situation where, for those employers who have the financial ability, it might become a licence to disregard the provision, whereas--

Ms. Gigantes: Is this not a Liberal herring?

Mr. Callahan: I do not think it is at all.

Ms. Gigantes: Nobody has proposed it.

Mr. Callahan: It provides the mechanism that truly gives a superior court a method of making certain that this legislation is adhered to.

Ms. Trainer: My point was addressed to the university system because that is where I belong. I know one of the most effective things you can do to a university is to withhold funds. That is why I made the suggestion. I did not mention fines. I just said withhold transfers to the universities if they do not comply. They will pay attention to that. That has nothing to do with showing up in court and paying \$5,000. They can find that quite easily.

However, if you withhold the percentage increases they have come to expect every year, because they are not complying with the law, or even if you only withhold a percentage of it, it is something that will make them sit up and take notice. That was merely a suggestion on my part for a mechanism that I know would be effective.

10:40

Mr. Callahan: You are suggesting something akin to Bill 94, where the feds withheld transfer payments from us until we were to bring it into play.

Ms. Trainer: Exactly. No money passed from the federal government to the provinces until the provinces complied, and it worked, did it not?

Mr. Callahan: It did, but it also in the long run made it a very difficult process to go through and one that was looked at with some difficulty by certain factors in society.

Ms. Trainer: The fact is that the medical profession went after the wrong level of government in this instance. They should have been lobbying Ottawa, not here. But that is neither here nor there. That was my suggestion because I felt it worked.

Mr. Callahan: Okay. I hear where you are coming from in that respect.

The other part of it is that I gather you are suggesting that, as the bill now stands, rather than there being two bills--this and the one being brought in by the Attorney General (Mr. Scott)--they should be lumped into a single bill and everybody should be protected at the same time. I suppose that has an attraction, but it also raises in my mind some of the questions of the variations of the bodies that are being dealt with.

Let us take municipalities, for example. By lumping them all into a single bill, you would be dealing not just with the level of government we control at the moment but also with those to which transfer payments are directed and whose impact would be directly and almost immediately on the constituents they serve. I really have some concerns about whether that would not cause a difficult atmosphere within which to gain acceptance of this principle.

This principle is definitely one of justice, it is definitely one of equity and it has been left too long without being rectified. However, part of the problem is that if you try to rectify it in a single bill and if it does not have the fair, just and equitable reception that the public should give it, you may have difficulties and you may find that the public reaction to it will be such that either they will try to resist it or they will lobby against it.

Ms. Trainer: You are talking about raising taxes to come up with the money.

Mr. Callahan: Yes.

Ms. Trainer: That would never have been my intention. Municipalities can do their own negotiating with the government. I negotiate from the university support staff sector, but municipalities have the right to come before you and state: "Fine. We want pay equity for our workers, but it cannot come out of municipal taxes; it has to come from the government, because the government has the initiative and it is the one to work with." That is their bailiwick. I will let the municipalities take care of that. I think they could do it quite well. I have heard a few municipalities make presentations to committee hearings in this building and they do things very well. I am not worried about their ability to cope with that.

Interjection.

Ms. Trainer: Sure, but Art Eggleton and a group made a presentation to the pay equity hearings. They had little or no problem implementing pay equity in Toronto. It took a long time.

Mr. Callahan: That is essentially my concern. I can see your desire to get on with it and to get it done quickly, but the concern I have is that if you lump the two bills together as opposed to taking them the way they are, you may in the long wrong be delaying the date when justice should be implemented. I see that as a real danger.

Ms. Trainer: My retirement date is May 1, 1999. I would like the last five years of my work life to be enhanced to the extent that I do not have to move to a very small apartment or change my lifestyle dramatically because my income will not support the kind of lifestyle I enjoy. I would like the government to get a move on--whatever way it wants to do it--but get a move on so that I can retire in relative comfort after having worked all of my life. That is all I want.

Mr. Callahan: But you are also blazing trails for those people who are not going to retire in 1999.

Ms. Trainer: They are going to retire sooner or later.

Mr. Callahan: I appreciate that, but the fact is that the longer the inequity continues to exist, the larger the number of people it is treating in an unjust fashion; that is all I am saying. I have concerns, and I think those are the concerns of the minister. We have already seen the battle lines drawn by the two opposition parties in terms of this bill itself. By looking at them lumped together in a single bill, as opposed to the two of them, you may think you are speeding up the process, but I suspect it may be longer. That is all I have to say.

Mr. Wiseman: I wonder whether you have some of the same concerns I have. One is from an employer's standpoint. Everything we have heard is that everyone should be treated equally, and I have no problem with that, provided their output is equal.

What happens in the case of two employees, one of whom does not take off as much sick time, is always there and dependable and stays the extra five or 10 minutes to get a letter out, if it is clerical work, whereas the other employee watches the clock and is gone? The employer wants to reward the first person, male or female. Do you not think he or she should have some way, without breaking the guidelines, to say the person is putting forth more

effort than four or five others in the office who are doing the basics and nothing extra?

Mr. Meagher: I am sure she would accept a promotion.

Mr. Wiseman: No. They are all in the same office. You have five or 10 people, but you have one or two who have a high output and who are really concerned with the business and how it goes forward.

The reason I ask is that quite a few years ago I sat on the school board when we lumped everybody into categories. There was no way to pay an incentive to a very good teacher, male or female, who wanted to achieve and did achieve, who kept the kids after school and did all the things we thought teachers should do. There was no way to pay them unless they went into a different category.

I feel that unless we look at something such as merit pay at this time, we are going to do the same darned thing here. We will pay some employees who are not up to scratch the same amount as someone who is putting in a lot of effort. They will say: "What is the use? I do not get any more money for it. I do not get any recognition." Perhaps the boss says, "Thanks very much." Have you any objection to an employer's paying something extra to somebody who did this and it could be proved he did this?

Ms. Trainer: Celia has an answer for you.

Ms. Harte: The whole point of the exercise is that people are paid for the work they do and the work is worth something. Within the Confederation of Ontario University Staff Associations generally--someone correct me if I am wrong--groups are absolutely opposed to notions of merit pay. Those who have it keep trying to get rid of it, because it is abused and it is unfair. It has as much to do with favouritism as anything else.

People in our union often say, "Why do we not have something such as merit pay?" We talk it out and then they say, "We may as well not have it." It causes dissension among the groups in the university that have it. The faculty and the professional and managerial staff have it at the university, and it creates tremendous division and resentment among people. We do not want it.

The promotion aspect is a valid one. If people can expand their work and do other things, it is not just a question of somebody working five minutes longer. Some people have to leave on time because they have to pick up kids from day care or whatever they need to do. It is not necessarily a fair way of judging. Some people are healthier than others. You are supposed to pay people for the work they do and the work is worth something. That is what equal pay for work of equal value is about. We are talking about job comparison; we are not talking about people comparison.

Mr. Wiseman: Output is a comparison. I guess I am looking at it as an employer.

Ms. Trainer: It is an employer's problem to make sure everyone who is being paid equally is working equally.

Mr. Wiseman: I would hate to have to fire a person because, compared with others, he is not coming up to the standard I want, but that is the only route you leave an employer if you do not allow him to pay merit pay.

Ms. Trainer: I am speaking of a group that has merit pay and has been trying for 13 years to get rid of it.

10:50

Mr. Wiseman: The other question I have difficulty with is referred to on page 2 at the bottom. You have seasonal and part-time employees coming into a work place and getting the same benefits as an employee who has made it his or her career.

If someone walks in off the street, if a young person who takes a summer job comes in to do some clerical work or whatever--maybe the person is not very good at clerical work but does some typing and whatever--and you are saying we have to pay that person the same amount with the same benefits as someone who has dedicated his life to serving that employer.

As you said yourself, you have been with the university a long time, and you hope to be there until you retire in 1999. Would you not feel a little hurt to have some person come in for two or three weeks and get the same money as you?

Ms. Trainer: As a fair person, if he is doing a job he should be paid a fair rate for it.

Mr. Wiseman: Her heart is not in it, though.

Mr. Meagher: Advancement through the range exists. If someone walks in off the street for a sessional job, he should be paid at the start rate just as if someone walked in off the street for a permanent job. If you have been there 40 years, you will get paid more than someone who walks in off the street because there is advancement through the salary range.

Mr. Wiseman: Maybe I am naïve, but I always thought you paid benefits and everything to say to your longtime employees, "I like the job you are doing."

Ms. Trainer: I did not say to pay benefits. I said they have no or few benefits, which is something I am opposed to. They should at least have prorated benefits, but that is not the argument I am putting forth there.

Mr. Wiseman: I was reading the first sentence that says there should be no exclusion for the reason of part-time--

Ms. Trainer: Not only do they get paid the lowest rate, but they also do not have any benefits. What has been happening on all our campuses is that our full-time jobs are disappearing and are being replaced by part-time jobs. That is our fear.

If you make it very attractive for employers to hire part-time, seasonal and temporary workers, then our full-time jobs will disappear. If you look at any sector of work in this province, you will see that picture emerging, particularly in areas of office work. There are women working at home now for employers because it is cheaper for the employer; it also may be a bit more convenient for the woman at the time, but it is certainly not to her advantage.

Mr. Wiseman: You are not saying in the last paragraph on page 2 that they get the benefits of a full-time job.

Ms. Trainer: No. They not only get the lowest wages but also have no or few benefits. I did not say anything about paying them benefits.

Mr. Wiseman: The first would indicate to me as a lay person that there should be no exclusions.

Ms. Trainer: There should be no exclusions for equal value pay, which is the topic we are dealing with.

Mr. Wiseman: But you do not count pay and benefits as part of the pay schedule.

Ms. Trainer: I am a very strong proponent of prorated benefits for any worker, but this is not the argument I am presenting today. You are confusing the issue at the moment.

Mr. Wiseman: I just want to make it clear in my mind that you are not adding all the benefits there.

Ms. Trainer: They should be, but I am not asking for that right now.

Mr. Wiseman: I am not a lawyer; I am just looking at it as a lay person. I want to make it clear; I think you will be doing all the people who are full-time an injustice if that is what you are recommending.

Ms. Harte: Does that mean you have a problem with their having the same pay?

The Acting Chairman: Excuse me. I wonder whether we could move on to Mr. Polsinelli.

Mr. Mitchell: May I have a supplementary to Mr. Wiseman's question? I heard you say you belong to an organization that is trying to do away with merit. If merit goes, where does ambition go?

Mr. Meagher: Ambition does not grow exclusively out of one's wallet.

Ms. Harte: I also resent the implication that the membership I represent has no ambition.

Mr. Mitchell: I am sorry. We are going to get into something, because I totally disagree.

The Acting Chairman: We are getting a bit off target on this.

Ms. Trainer: I thought it was getting very interesting.

The Acting Chairman: It is interesting, but we have to allow every member of this committee to ask some questions. I look forward to hearing from Mr. Polsinelli now.

Mr. Polsinelli: I appreciate the opportunity to ask questions. Initially, I would like commend you on your brief. It is an excellent brief. If this is an indication of the type of briefs that will be presented to this committee in the next few weeks, I look forward to a very interesting and stimulating few weeks in the public hearing process.

We as a government have recognized that a number of the points you raised were lacking in the initial bill, and you will see in the list of amendments that were given to you this morning that some of your points have already been covered, particularly the one you mentioned on reprisals. There is an amendment dealing with that. That was a deficiency in the initial bill.

You can appreciate other things that had been overlooked will come up during the public hearing process, and we will be pleased to look at them again and introduce them in the bill. I want to ask you a few general questions, if you will allow me.

You indicated that you have been involved with this issue for a long time. How long have you been lobbying government to have this type of legislation?

Ms. Trainer: Ted Bounsall's bill was my first involvement. If some of you can dredge--

Mr. Charlton: It was in 1975.

Ms. Trainer: Thank you. Before that, I had been working towards it, but I had not honoured Queen's Park with my presence until then. I realized that perhaps this was the only avenue that was open to us; we had tried on our councils and got nowhere, and we felt that if we started working towards it through the legislative process, it might work. I also sat in the House when the last New Democratic Party bill on equal value was voted down. I might say I have a list of all the MPPs who voted against it.

Mr. Callahan: How many are still here?

Ms. Trainer: I am just wondering how they feel about it today.

Mr. Polsinelli: Would it be fair to say you have been concerned and lobbying for this issue for the past nine or 10 years?

Ms. Trainer: About 10 years, I would say.

Mr. Polsinelli: I take it then that this is the first government bill you have seen try to implement some type of equal pay system.

Ms. Trainer: Yes. You get points for trying.

Mr. Polsinelli: Given your sense of involvement, I am sure you are also aware that every other jurisdiction that has implemented some type of equal pay package has started with the narrow public sector. For example, I can refer you to Manitoba, which has a bill that started with the narrow public sector. It is to be hoped it will go on into the broader sector as time progresses.

This government has also indicated its intention to start with the narrow sector as defined in this bill. You must have heard that the Attorney General has indicated that in this session or the next session of the Legislature we will be introducing a bill covering the broader public sector and the private sector.

My question to you is, given your partial dissatisfaction with this bill and given that you have been waiting 10 years for government to introduce something like this, would it be too much to ask you to wait for another two or three months to see a bill affecting the broader sector? Given your involvement with the previous government, I can understand your reluctance to trust governments in introducing the bill.

Ms. Trainer: I asked the previous government to give us a break on wage restraints, and it did not listen to me. That has seriously affected my salary since then.

Mr. Polsinelli: What I am saying is--

Ms. Trainer: What I am saying is, you want me to listen to the government and wait until it gets around to it. We went to the last government and asked it to throw out wage restraint because it was unfair and unjust, and we did not get anywhere doing that. It is kind of a Mexican standoff.

Mr. Polsinelli: As I said earlier, given your past experiences, I appreciate your reluctance to trust government to maintain its promises. But given that this is the first piece of legislation in this province dealing with this issue; given that this piece of legislation deals with it in a way comparable to and sometimes better than the way Manitoba is dealing with its issue, for example; given that we have a firm commitment from the Attorney General that phase 2 of this process will be introduced in the upcoming session of the Legislature; and given that you are unhappy, to say the least, with some of the provisions of this bill, would it not be fair for you to wait a few more months and see what the bill that will affect the university looks like?

Ms. Trainer: "Fair" is a word that is fast moving out of my vocabulary. I am not accorded fair treatment; so I am getting used to not using that word. My disappointment is that after such a long wait, it is such a poor piece of legislation. Given the fact that we have all these experts-- and God knows they are costing the taxpayers of this province enough money-- the government could have come up with better legislation to begin with.

We have sat and discussed this bill with people at the Ministry of Labour. When we said, "You cannot possibly mean this," we were told, "Oh, do not pay too much attention to that, because it will never be used." We in the unionized sector, who know every comma and every T-stroke are used against us when we have an arbitration case, find it sort of naïve that the government would expect us to believe that once legislation is enacted, that no one is going to pay any attention to the fine print.

11:00

Mr. Polsinelli: I do not think I am implying that.

Ms. Trainer: No, but the thing is that is what we have been told. My viewpoint on this is maybe a little broader than yours. I have been around the maypole quite a few times and I do not want to be patient any more. I mean you are getting this message. My patience is exhausted.

Mr. Polsinelli: I got your message quite clearly. I sincerely understand your frustration in being made promises and those promises not being kept. That I appreciate and I empathize with you on that.

Let us deal with one of the other issues you raise in your presentation. It is something that I am a little bit concerned about. On page 4 of your brief, the first paragraph says, "We object strenuously to the lowest male rate being used when comparisons are made." The purpose of this bill, at least as we see it, is to address a societal undervaluation of women's work, that is, a difference in pay because of gender differences. Would you not agree, that if you have a series of groups of jobs that are predominantly male jobs, then to address that aspect of the difference in pay that is due or attributable to societal undervaluation of female work, it is fair to compare it to the lowest group because the other difference in pay, I submit, is due to some factor other than gender discrimination?

Ms. Trainer: These things have yet to be established. A job is a job. Evaluate the jobs; compare them. That is all we are asking, but do not use the lowest rate to compare to a group of women's jobs. What is the expression? That is not even a crumb.

Ms. Harte: Half a loaf is not enough.

Ms. Trainer: That is not half a loaf. It is not even a crumb. I know what you are saying, but you have to understand that you are looking at something that is fairly structured in the public sector. If this bill goes through as it stands with that in it and if the expanded public sector and private sector legislation is modelled on that, then what we are going to be facing is Celia's concern. You are making a legitimate point, but that is a very narrow context.

Mr. Meagher: We do not feel that gender bias is wiped out when we make women equal to the least of men. That is not an elimination of all gender bias.

Ms. Trainer: Thanks, Sean. I was trying not to be such a drag about that.

Mr. Polsinelli: I would like to pursue that a little bit further.

Ms. Harte: The other point I would like to make is that most men are not necessarily in the same kinds of value systems that are used a lot in clerical work. What will start happening is you will have all the men down here next year wanting equal pay for work of equal value because they will start finding out that they do not have it either.

Mr. Polsinelli: Are you not really talking about pay equity generally or employment--

Ms. Harte: No, I am talking about equal pay for work of equal value. This bill is talking about pay equity.

Mr. Polsinelli: I am sorry. I used the wrong term. Your proposition to us is basically one of equal pay for equal work and employment equity but not one of pay equity in terms of eliminating that gender bias. That is what this bill is trying to address.

Ms. Trainer: That is what the government is doing wrong. Pay equity is the quick fix as the term was used by members of a group I work with. It is the quick fix. It is not the panacea for all our woes.

Mr. Polsinelli: It is not intended to be.

Ms. Trainer: No, but what the panacea for all our woes is to be paid equally on the basis of job value.

Mr. Polsinelli: That is right.

Ms. Trainer: That is what we want. That is what we need. This bill is not addressing it at all.

Mr. Charlton: What you promised was equal value.

Ms. Trainer: Yes.

Mr. Polsinelli: I disagree.

Ms. Trainer: I am sorry, but under the--

Mr. Polsinelli: Let us agree to disagree on that.

Ms. Trainer: Under Convention 100, no one mentioned pay equity. No one mentioned any of these wonderful words.

Mr. Polsinelli: Let us agree to disagree on that point because I think it involves certain judgement calls and certain decisions that have to be made. I believe that given the decisions that have been made in the bill, we are addressing that portion of the gender bias; that is, the pay inequity that is due to gender bias.

I am sure we could debate it for the next hour and I do not want to take up the time of the committee members.

The Acting Chairman: Mr. Polsinelli, can we look forward to just one or two more questions?

Mr. Polsinelli: One more question, Mr. Chairman. As to job classification, the predominant female group of jobs and the predominant male group of jobs, I believe you indicated you would like to see that eliminated. How can we compare what has traditionally been women's work with what has traditionally been men's work without having some type of yardstick to measure what has been female work and what has been male work?

Ms. Trainer: Look at the salary level. That is your yardstick. It is way out of whack between males and females in any group, no matter what the hell the jobs are. Somebody has to look at it and find out why these men are so valuable. That is the only possible rationale. My esteemed colleague here is invaluable to the University of Toronto Staff Association--I have no doubt about that in my mind at all--but I do not want him paid any more than a woman doing the same job he is doing, or similar work or work of equal value to the organization. You do not have to go to percentages. Just look at the wage scales and where people are on the wage scales and then find out why they are where they are.

Mr. Polsinelli: When you are comparing male work and female work, do you compare a man and a woman without reference to the type of work they are doing or the job classification they are in? Do you not need some yardstick to determine that the type of work the woman is doing has traditionally been woman's work and then try to determine whether it should be compared to work that has traditionally been male work? Then you try to find the balancing act, rather than saying, "This woman is severely underpaid. This man is making more money. They are doing comparable work." You have to have measures to determine the relative values of the work and you have to have measures to determine what traditionally has been female work and what traditionally has been male work, and the difference in pay that is attributable to gender bias.

Mr. Meagher: I see no reason why you have to have that.

The Acting Chairman: I wonder whether we can now bring this presentation to a close. We have had a very interesting and exhaustive question period. I am sure we could go on at length, Mr. Polsinelli, but time is passing. Ms. Trainer, thank you and your group very much for coming and making this presentation to us.

Ms. Trainer: Can I ask one question? My understanding was that at four o'clock the Equal Pay Coalition was making a presentation. I see from the agenda I have been given that it has been moved to next Tuesday. Is that correct?

The Acting Chairman: Yes.

Ms. Trainer: That is too bad.

Ms. Gigantes: Have we been given a new agenda?

The Acting Chairman: There was a new agenda given out yesterday, Ms. Gigantes.

Ms. Gigantes: I thought they were still on for today.

The Acting Chairman: The next presentation is by John Smart, trustee, Ottawa Board of Education. We have allocated half an hour for his presentation. We hope there will be some time for questioning at the end.

Mr. Smart: Yes, I hope so. I understand that the members of the committee have been able to see the text. I want to go through it and add to it.

The Acting Chairman: I will just mention to the committee that it is exhibit 4. It was handed out this morning.

JOHN SMART

Mr. Smart: I am very grateful to the committee for making some time available to me this morning to talk to you about this bill. I am here in three different capacities to express my support for the principle of pay equity in Ontario and to ask the committee to amend Bill 105 to broaden its application and to toughen its provisions somewhat.

11:10

As a citizen of the province and the father of a daughter who has just graduated from university and is attempting to enter the work force, I want to see inequities removed from our society as quickly as possible. I am sure the whole committee does. As a federal public servant and a unionist in Ottawa who has lived and worked in a special way with the federal pay equity legislation, I want to offer some reflections on that experience. Finally, as a trustee of a large board of education in Ontario, I want to say why I think Bill 105 should be expanded, at least to cover the whole of the public sector in Ontario.

I regret to say that Bill 105 seems to have been drafted in the spirit of fear of pay equity in the province and, in my experience, I do not see any justification for that fear. Although I have a number of criticisms to make of the bill, I was delighted to see it introduced. I think members of this committee should be conscious, and almost certainly are conscious, of the role that is available to them to make a major improvement in Ontario society and they should be proud of that role. It is not often that any of us gets a chance to participate directly in the betterment of our province and, frankly, I envy the committee's chance to do that in this case.

As a general opening comment, I might say that I do not see why the government did not in this bill honour its commitment made in the Liberal-NDP accord of May 28, 1985, and "introduce legislation for equal pay for work of equal value in both the public and private sector," as promised in the accord at that time. I hope this committee will greatly expand the bill towards meeting that commitment. Inequity towards women is a leading feature of our society, unfortunately. That inequity is nowhere more important or more destructive than where it exists in the work force and the labour market.

Between 1977 and 1981, I lived through the application of the federal pay equity legislation in the federal public service. I was chairman of the 300-member, predominantly male, historical research group in the federal public service at the time when that group of employees was made the subject of the first pay equity case at the federal level before the Canadian Human Rights Commission. I still continue as vice-chairman of that bargaining group in the federal public service.

At that time, the 500-member, predominantly female, librarians group in the federal public service complained to the human rights commission that they did work of equal value to that done by the members of my group, but were paid on average \$3,000 less per year to do that work. In January 1981, the Canadian Human Rights Commission found in favour of the librarians. The Treasury Board, which is the employing department in the federal public service, then implemented retroactive and continuing pay increases for the librarians in order to remove the pay differences based on sex discrimination between the two groups.

Frankly, it was not an easy time for the members of my group, the historical research group, but to their credit, members of the HR group supported the librarians' case before the commission and supplied all the factual and pay information needed to make the necessary comparison between the two groups. At the end of the process, the head of the librarians' group was kind enough to say that their case before the human rights commission would not have been successful without the support of the HR group.

I think you should expect some apprehensions on the part of the groups in the Ontario public service that are involved in such comparisons. At the time, the HR group had two apprehensions. There was a fear that, first, their work would come to be undervalued as a result of the comparison and, second, that the employers would achieve pay equality for themselves and librarians by, in some way, lowering the HR pay to that of the librarians instead of raising the librarians' pay. I am glad to say neither fear proved to be of substance, but perhaps there are continuing difficulties or situations to be watched.

For example, in 1984 the federal Treasury Board, the employing department, announced that it was considering merging the librarians' group and the historical research group into one bargaining group to operate in future under one collective agreement, one classification standard and, of course, one pay scale. Under federal law, the Treasury Board has absolute power to make such changes without reference to the employee, and matters of classification, unfortunately, cannot be discussed at the bargaining table.

The fear arose that this would be the mechanism by which the human rights commission decision of 1981 would be subverted. Librarians and HRs would then have one pay scale and there was apprehension that future pay increases for the group would be kept very small and artificially held down by Treasury Board because of the 1981 decision. To its credit, the Canadian Human Rights Commission stepped in on the side of the two groups of employees.

Under subsection 11(5) of the Canadian Human Rights Act, and I think there is a similar provision in your bill, pay equality cannot be achieved by lowering the pay of one group to that of the other. I might say I found the role of the Canadian Human Rights Commission, the staff and the role of the chief commissioner, Gordon Fairweather, exemplary in the implementation of the federal legislation.

I say later in this presentation that it is time-consuming legislation to live with. It has a number of irritations, but my recommendation to the Ontario government would be that it look for staff and a chief commissioner for the Pay Equity Commission with the same qualities of sympathy, understanding, knowledge and toughness at times that Mr. Fairweather and his staff have demonstrated.

I cite the correspondence that took place and the role that the commission played in 1984 in preventing Treasury Board from merging the two groups. The stand taken by the Canadian Human Rights Commission was that since there was a possibility that the merger of the two groups would frustrate the 1981 decision of the Canadian Human Rights Commission with regard to the librarians, it was opposed to the merger taking place and the merger did not take place.

Today, it is important to say that the two groups of employees, the librarians and the historical research group, work amicably side by side in a large number of federal government departments doing valuable work, for which they are paid the same wages. Although the federal legislation is somewhat cumbersome and time-consuming to use, the federal public service is a better and fairer institution because of it. I think you should expect the Ontario public service to go through a similar improvement when this legislation comes into effect.

Because I believe in pay equity legislation, I would like to see it extended to the public and private sectors in the province. My school board is no different from other school boards in the province; that is to say, we pay secretaries less than we pay custodial staff and less than we pay our truck drivers and bus drivers. All these employees work hard for the board of education and deserve more pay, but the female groups are paid less than the male groups simply because they are female, even though they are doing work of equal value to the board. We need legislation to take away that inequity.

In another case, if you came with me today to the Ottawa Board of Education High School of Commerce on Booth Street in the city's downtown--a school which one member of your committee, Evelyn Gigantes, knows very well because she represents the area and has done a lot of good work on behalf of that school--I can take you to two sets of classrooms side by side in one wing of that school. In one set of classrooms, some of our predominantly male, regular secondary school teachers hired by the school principal teach a business studies program to adult students enrolled in the regular high school.

Across the hall is predominantly female, adult, day school staff hired by the continuing education department and covered by a different contract with the board. These teachers teach adults who have come back to high school to get one, two and three credits they need for their high school diplomas. In fact, some of them are getting all their high school credits with us under this program. On an hourly basis, the adult day school teachers, who again are predominantly female, earn only 60 per cent of what the regular secondary school staff, predominantly male group, earn even when all factors are counted in.

We might as well remind ourselves that all Ottawa Board of Education employees are represented by unions and negotiate new contracts on an annual or biannual basis. The gender-based discrimination, which I have described here and which exists in the board, needs new legislation to remove it.

I hope this committee will recommend expansion of Bill 105 to cover the whole public sector. My school board will spend \$198.5 million of public money in 1986, of which 20 per cent comes directly from the provincial government. We employ 5,500 full- and part-time staff in the city of Ottawa, making us the second largest employer after the federal government in that city.

In my opinion, it is a mistake to exempt public bodies such as school boards, hospitals and municipal councils from pay equity legislation. All that will be achieved is a continuation of the pay inequities which exist now in the public sector.

I thank the committee for this hearing and look forward to any questions you might have. I wish you well, Mr. Chairman and the committee members, with your continuing work on Bill 105. I think it is very important work.

The Acting Chairman: Thank you, Mr. Smart.

Ms. Gigantes: I would like to thank Mr. Smart for his presentation. It is interesting to have someone before us who has been through an equal pay case. Although I have heard the case to which you refer described from the librarians' point of view, I have not heard it described from the historians' point of view. Thank you for that.

I would like to ask what you feel the reaction of your board would be. Having been through the process once and having looked at the situation of employees under the Ottawa board, you obviously feel quite strongly about it. What do you think the reaction of your board would be and, second, how do you think the way that might be financed would affect your board's view?

Mr. Smart: To start with the last part of your question, my school board, along with all others in the province, is very strapped for dollars. Some trustees might react to the legislation first at that level and ask, "How do we pay for it?"

To come to the first part of your question, "How would the board react?" I think a resolution moved at my board in support of this legislation and in support of the principle of equal pay for work of equal value would pass the board. There would be a significant amount of discussion, but it would pass.

It is interesting that no such resolution has ever been moved at my board by me or anybody else, and I think the effect of the legislation will be to start such discussion at the board.

Ms. Gigantes: As one of the large school boards in Ontario, you must be aware of a submission made by the Association of Large School Boards of Ontario to this government against the application of the principle of equal pay for work of equal value. Can you explain what the relationship of your board is to that kind of submission?

Mr. Smart: You have to understand the points of view coming to you from the Association of Large School Boards of Ontario. The exact relationship is that all boards that pay a fee to be members of ALSBO can send representatives, but not all boards do, and we do irregularly.

We did find that ALSBO's response to this piece of legislation, and more dramatically with its response to extended funding for separate schools in the province, was quite out of phase with opinion at our board. Although the ALSBO staff are very diligent and prepare long documents, you have to realize that in the past, with the extension case and with this case, they have got out of phase with the school boards they are supposed to represent.

Ms. Gigantes: But the decision by ALSBO to make such a presentation or submission to the government would not have been raised at your board as a matter of course?

Mr. Smart: No, it was not.

Ms. Gigantes: Do you know how many of the members of ALSBO would have the same kind of loose link with the organization that the Ottawa board seems to have?

Mr. Smart: The process is the same for all the boards participating. That is, ALSBO has regular plenary meetings and some committee meetings, but whether someone from our board would go would depend on the interest of the individual trustees and the availability of a particular trustee at a particular time.

In other words, ALSBO has a very loose relationship with its individual board members, and some problems can occur. It would be good for those of us who do finance ALSBO to look at that to make sure there was a clearer, stronger connection between what the boards that make up ALSBO are thinking on any particular problem such as this and what ALSBO is saying about it. There is now a lack of congruence between major positions taken by ALSBO and what I perceive to be the opinions of the school boards.

The Acting Chairman: I have one question, Mr. Smart. You in your presentation are not speaking on behalf of the board.

Mr. Smart: That is correct. I am speaking as an individual trustee.

Mr. Callahan: Mr. Smart, I would like to ask you a few questions. You have been a trustee on the Ottawa board for how long?

Mr. Smart: Since 1980.

Mr. Callahan: I understand where you are coming from, because in my own riding we had secretaries who were making less than the bus drivers, the janitors and so on.

First, I would like to ask, from your experience in 1980, how did that inequity occur? Was it that the bus drivers' union had more crunch in negotiating a collective agreement than the secretaries did, or were the secretaries nonunion?

Mr. Smart: No. The secretaries were represented by the Canadian Union of Public Employees; I do not know from what date that stems. Our custodians, for example, are in a separate union, but the bus drivers are in the CUPE local as well.

I do not know the whole history. My perception is that the discrepancy stems from long ago and that it has to do with perceptions--which used to exist largely unquestioned but which now are obviously being questioned and set aside--that it was natural to pay women less than men.

Mr. Callahan: It was sort of a gender discrimination. Is that right?

Mr. Smart: Yes.

Mr. Callahan: But I imagine that built into that is also the question of the strength of the particular union and how it could negotiate a wage settlement for one group as opposed to another.

Mr. Smart: That might apply in other situations. As I said, the bus drivers, truck drivers and secretaries are in the same local and all bargain one contract.

Mr. Callahan: This might be a very naïve statement, but it has always struck me as very odd. For instance, in my present capacity, I could not operate without the ladies working for me; they are essential people. I cannot understand why trustees would bring into the negotiating process that gender discrimination unless it was as a result of the negotiating process and you had free collective bargaining going on and it was negotiated badly by one union as opposed to the other.

Mr. Smart: There is a process of realization. We are changing our ideas. Legislation such as this not only tells you what you must do about your employees but also leads to changes in perception. All of us have to go through that kind of rethinking. It was accepted that certain jobs would be paid less, and not very much attention was paid to whether the work was of equal value to what someone else was being paid; and it was accepted somehow that women could make do with less money. Those are perceptions with which people operated, and if they were ever valid, they are not valid any more.

The Acting Chairman: Mr. Charlton has a supplementary to the last question.

Mr. Charlton: Mr. Smart, in the context of the question and your response, would it be fair to say, given that much older bias having been built into the system, that the past decade of very severe restraint both for municipalities and for school boards has severely limited the ability of any board or any union negotiating with a board to address seriously those built-in discrepancies?

Mr. Smart: Yes, I think that is true. In fairness to the CUPE local of the Ottawa board, it does put this issue on the table each year, and there is a redress available to trustees such as myself to say, "Why do you not direct your negotiating team to be more sympathetic and to bring back proposals that include acceptance of this part of the CUPE bargaining package?" Again, as an individual trustee, I will do something about that with our board in the future. But I think a simpler way to go would be to have this legislation cover school boards.

Mr. Callahan: I will get to that in a second. I can understand your concerns, and before Mr. Charlton asked his supplementary, I was going to agree with you that the entire situation has changed. There are lot more women in the work force, and they are no longer just making pin money. Many of them are supporting their families and having a difficult time doing it. You are really talking about equal pay for work of equal value, which would be very nice to be able to implement if the consolidated revenue fund had an unlimited bottom.

I would like to go to your experience as a trustee, which I am sure was much the same as my experience as a municipal council member. You had limited

funds; since those funds did not allow you to get into capital ventures or to keep your schools large enough for the students, you had to put in all sorts of portables and you had to bus people at great expense.

11:30

With respect to your suggestion that all these public sector people should be brought under a single bill, let us first look at it from the standpoint of the reality of things in terms of the dollars available. Secondly, if you bring in a single bill, you will have at least had the experience of one bill to find out where the wrinkles and the difficulties are so you can make the next one a little better and amend the first one to bring it into line.

Do you not see that as a reasonable process, given the fact that the bill as currently presented by the Minister of Labour deals with crown employees as opposed to those more localized situations that you people have to run the gamut for and have to find the bucks to deal with? Do you not see a real distinction between the challenges? There are going to be challenges, there is no question of that.

My understanding of politics is that it is the art of the possible, not the impossible. First of all, if you do not bring them in separately you will not see the difficulties with the first one so you can improve the second one. Second, there is the question of whether you can receive the broad support of the public, which in justice and in fairness should be received.

Do you not see sort of an uprising and a furore at least at the local level, and you guys are the closest form of government, if it has a tremendous financial impact on the process? You may find that your ratepayers may go absolutely bananas.

Mr. Smart: To speak first of our particular financial situation with the Ottawa board, although it is not a desirable or attractive one, our present resources could allow us to pay equal pay for work of equal value to the secretaries of the board, who are numerous but not all that--

Mr. Callahan: You are talking at current levels, without affecting the overall picture of capital funding related to your plant and staff.

Mr. Smart: We would have to make some adjustment, but we are probably talking about 400 employees at a cost of perhaps \$2,000 or \$3,000 each per year. We could manage, even in the 1986 budget, to rearrange our priorities among the \$198.5 million we are spending to achieve that.

For us, it is a reasonable goal from all points of view, including the financial one. I have some sympathy. I understand what you are saying about phasing in and so on, and I have some sympathy for that. The fear exists, though, that--

Mr. Callahan: That it will stop there.

Mr. Smart: Yes, that things are in a particular political situation in Ontario now that they were not in two years ago and people are not sure where they will be a year or two from now.

The people who care--and some people definitely have cared about this situation, not just in the abstract but in the pocketbook, for years--want to

see the government meet its commitments. In this instance, it is a commitment out of the accord. They want to see this government meet the commitment it made for a period of two years, which it said would date from May 28, 1985.

As to gaining experience, there is enough experience with pay equity legislation in Canada and other jurisdictions around the world to enable us to devise a bill that would work. Certainly, all legislation is subject to review later. I guess I am disagreeing with the idea that we need to phase in this particular matter.

The Acting-Chairman: Mr. Callahan, time is moving on.

Mr. Callahan: I want to ask one more question. The thrust of it was that you have to recognize--and I think all of us would be naïve if we did not recognize this reality--that if you do not gain public acceptance through what I would call a dry run, as it were, you may have some difficulty. Let us say that we went the full gamut and brought it all in, the private sector at the same time, all in one go. I do not think anybody here, if he were going to speak of it in those terms as opposed to speaking to it in terms of the constituencies he is advancing, would disagree with that. By running for a full package all at once, you can run the risk, really, of acceptance out there not being there, even though it should be there in fairness. We understand it thoroughly, but I am not sure the public would necessarily understand that in a total package.

Mr. Smart: All I would say is that all the organized surveys of public opinion that have been undertaken in recent years in Ontario are strongly in support of this.

Mr. Callahan: Yes, but that is until they see the first bill come in, and they will go bananas.

Mr. Gillies: I just have one line of questioning, Mr. Smart, and it is regarding your comments in the brief about the teaching profession. Can you enlarge on that? I would have thought, and I have thought over the years, perhaps erroneously, that if there was one profession that would not benefit as much from equal pay provisions as many other occupational groups I could think of, it would be the teaching profession. I had not thought of a lot of gender bias in the wages paid to teachers, and yet the example you use in your brief is very compelling.

Mr. Smart: This is a particular case. Our board, along with a number of other boards, particularly urban boards, has been moving more and more into adult education, adult basic literacy and so on. For the past five years, we have had an adult day school, but that program started with our continuing education department and it has in the past been regarded as part-time work. Most of the jobs, until five years ago, when we started the adult day school, actually went to our regular daytime teachers, who would teach a course at night and on Saturday and who would make some extra money that way.

We found a demand, and it is our fastest-growing program now, for adults to come back and complete their high school during the daytime, sometimes with help from Canada employment and so on. It is a particular circumstance, if you like, but it exists in other school boards too. Because it was part-time work, this is one of the lead-ins to it. We have 45 teachers now in our adult day school; 40 of them are women and they are paid 60 per cent of what the regular Ontario Secondary School Teachers' Federation teachers are paid.

As a result of a decision last year that went to the Ontario Labour Relations Board, the OSSTF did gain the right to represent both groups of teachers, but they were under two different contracts. Thus, a small percentage of the 1,600 teachers in our OSSTF local are under this one contract, but they are almost all women and they are paid 60 per cent. The OSSTF is attempting to address that, but I describe the situation as it exists now.

The Acting Chairman: Mr. Smart, time has elapsed. Thank you for your presentation.

Mr. Smart: Thank you, Mr. Chairman and members of the committee. The best of luck with the very valuable work you are doing.

11:40

The Acting Chairman: Next is Rita Lalumiere. This presentation was handed out this morning. There is a map of the Adult Occupational Centre, Edgar, on the front of it. Welcome to the committee.

RITA LALUMIERE

Mrs. Lalumiere: Good morning, ladies and gentlemen. I feel I am a little out of my element here. I am not used to public speaking or to appearing before committees.

Mr. Callahan: Do not worry about it. We are out of our element too.

Mrs. Lalumiere: I feel it is necessary to be here to state my views on this bill.

I am a seamstress and I feel it is a qualified profession. I feel we do not receive ample remuneration or recognition, given an analysis of what we do. I do not want to take up all your time on incidental things that I do--they are listed in my brief--but I would like to stress--you will have to excuse me because I am very nervous--that I feel I have a lot of responsibilities. I feel I am a qualified individual. I feel our pay scale is very low in comparison to other trades people. For men such as carpenters, plumbers and electricians at the centre, their salaries range from \$12 to \$13 an hour. My range is \$9.17 an hour. Even our cleaners or food helper personnel make closer to \$10 an hour. A hairdresser, or just about everybody else at the centre, makes more than I do.

I have a very responsible position and I think I have proven my worth at the centre. I have been there for four and a half years. I have formal education in sewing. I have two years in dress designing. I have had about 40 years' experience sewing in industry and have been in business for myself for five years doing repairs and alterations.

We have 250 trainees at the centre, and I do all their sewing needs. That even encompasses when they get a little irate and tear their clothes or demolish things. We very often teach them a lesson by my putting them back together, that type of thing. I also manufacture drapes to specifications and do all the installations. My duties go on and on. I handle the draperies at the centre, even the washing facilities; I recommend how they are going to be cleaned or utilized. I have to act as liaison between maintenance departments and other personnel in my dealings. I have to cut material that costs up to \$20 a metre and make these items with minimum waste.

As I said before, I do not want to take up your time giving you all these little details, but I want to stress that I have a job that takes responsibility and skill. At the centre, I am the sole seamstress in the department with nobody over me to give me any assistance. This is a big responsibility. I service my own machines. We have become so busy that we have had to update our sewing room considerably and have had to keep improving our machinery to keep up with the flow. We have had to add blind hemmers, interlock machines, pressing tables and work centres. You can imagine the volume we do in a year.

I feel it is bad that I have to be here. What is wrong with the system that we have to have this? There must be something lacking in communications. I have been trying for two or three years just to have my job evaluated to see whether they think I am justified in asking for more money, but they can hand me a criterion that says I have to have somebody working under me. I do not feel this is a fair analysis. If I am efficient, I can do a lot more work without somebody. I am being punished for that.

I feel that a good hard look has to be realized in this profession, in the sewing. I do not think it has been given the dignity it deserves. For that reason, I feel I have to be here.

You also have a copy of my work specifications and my work sheet. On these specifications and work sheets, from year to year they keep adding little wee things like "within the time limit." I have to have all my repairs done within a time limit.

Now we make drapes to specification. These are all draperies handcrafted to each individual window. Prior to that, they did not have that type of service, but I have been supplying that and I am not receiving ample remuneration.

That about covers what I have to say today.

The Acting Chairman: I am sure committee members would like to ask you some questions.

Mrs. Lalumiere: Yes.

Mr. Wiseman: Rita, I just wondered about some of the comparisons you mentioned. I know a seamstress who works for an active hospital doing basically what you mentioned in the rehabilitation end of it. Have you checked out to see if people in those areas are getting basically the same benefits? I imagine the benefits are pretty good, more than they would be for a seamstress working for a store or something like that.

Mrs. Lalumiere: Definitely.

Mr. Wiseman: To see how you compare with those people. The comparisons you gave were with carpenters, plumbers or something like that. As a lay person, I would be comparing the same job in another hospital setting. I imagine you are working with the Ministry of Community and Social Services. Is that it?

Mrs. Lalumiere: Yes, it is.

Mr. Wiseman: To see what they pay for the same job.

Mrs. Lalumiere: Services in the public sector are quite ample. If the fees for these services were rated on a dollar value, I am sure they would realize we have diminished the costs.

Mr. Wiseman: To satisfy yourself in your mind that you are getting paid equally with people doing a job in the same area.

Mrs. Lalumiere: I do not think there is the responsibility.

Mr. Wiseman: I was just going by this lady, who happens to be my son-in-law's mother. She does that with the duties as you have outlined. I do not know, but I imagine there must be others you can compare with to see whether \$9 and something an hour, plus the fringe benefits, is in the ballpark, rather than compare with a carpenter or an electrician who may be in a different category. It is harder to compare apples and oranges.

Mrs. Lalumiere: I have compared other fields. At most other centres, they usually do only one or the other field of work; they do not do drapery and clothing. My knowledge has to be very extensive. I have to know a little bit about tailoring, dressmaking, you name it. I have to know how these things go together. It is not very often you find a sewing department that does have this wide range of responsibility.

Mr. Wiseman: All I am saying is that the smaller centres usually have one or two people. This is roughly a 60-bed hospital, and they do anything from mending nightgowns or whatever to drapery, sheets and so on. That is what I thought you might compare to see whether you are fairly treated.

Mrs. Lalumiere: I think you will find clothing is a lot dearer today. All your apparel is becoming more and more costly. There is more and more responsibility in dealing with that. The cost could be prohibitive to a centre such as ours if they were not kept in repair and they just discarded and replaced them.

11:50

Mr. Wiseman: They have asked for an evaluation of your job, and as a layperson, I was thinking that if you did some homework in the area such as you are doing right now and went back to them with four or five comparisons in the same line of work, it might help your case a little, instead of comparing it with that of a carpenter or an electrician.

Mrs. Lalumiere: It is a trade, is it not?

Mr. Wiseman: Yes. All I am saying is to compare trade for trade and duties for duties or as close as you can get.

Mrs. Lalumiere: Quite frankly, I am not even asking for that kind of pay equity. I am asking you to take a look at what you are doing to women. Because so many people learn to sew at their mother's knee, it is not credited as a profession. This is what I am asking you to do. I am asking you to look at it and evaluate it as it is seen in each particular job.

I have compared some other centres. They usually have two departments, one for draperies and one for repairs, maintenance and care, uniforms and so on.

The Acting Chairman: I think we have explored that area. Could we move on to Mr. Gillies? He has some questions.

Mr. Gillies: Could you review for us again the wage bracket you are in? Is it \$9.17?

Mrs. Lalumiere: It is \$9.17.

Mr. Gillies: Is there a range, as far as you know?

Mrs. Lalumiere: I am at the top of the range.

Mr. Gillies: That is the top of the range, \$9.17?

Mrs. Lalumiere: For a sewer I. The criterion for a sewer II is that I have to have somebody working under me; so they have discredited that.

Mr. Gillies: I see in your brief that you voluntarily teach trainees, but they are not reporting to you; they are not exactly working under you.

Mrs. Lalumiere: No. I have had some working under me from time to time when we had a different system. We did not have the equipment that we have today. I had to have help. Over the years, I have trained some of our young students in dress designing as kind of a reward for helping me.

Mr. Gillies: How long have you been at the centre?

Mrs. Lalumiere: I have been at the centre for 10 years in May but only four and a half years in the sewing department. I was an occupational instructor prior to that, but I have an intolerance to plastics. We dealt with so many that I had to be transferred.

Mr. Gillies: You are at the top of your bracket at \$9.17. I see that a food helper makes in the range of \$9.80 to \$9.97.

Mrs. Lalumiere: That is right off the street, with no qualifications and no responsibilities.

Mr. Gillies: Their basic job responsibility would be what, assisting in the preparation or serving?

Mrs. Lalumiere: Peeling potatoes, making sandwiches, whatever.

Mr. Gillies: Can you outline for me the efforts you have made to have your position classification analysed? You said you have been trying for two or three years and have got nowhere.

Mrs. Lalumiere: Yes. I have appealed to my boss on several occasions. I went to personnel. Our personnel manager looked in my shop and said: "You do not follow the criteria. You do not have anybody under you. Therefore, I think you are being amply rewarded." Mind you, the personnel manager was moving to another facility; so he was not too enthusiastic about changing things at the centre.

Mr. Gillies: Have you approached anyone else in the management at the centre or just the personnel manager?

Mrs. Lalumiere: Yes, the service manager, Glen McLinton, and my boss, who is a purchasing agent. She is a stand-in for filling out my time sheets and that type of thing. She assists me and helps to look over the situation. We discuss what we are going to do at the centre. Other than that,

she does not have the knowledge to assist me in any sewing needs or with my machinery.

Mr. Gillies: What about your union? Have you approached it?

Mrs. Lalumiere: I always thought the union wanted to go more in the grievance line. I like my job and I like being a civil servant. I want to be positive. I find that unions tend to be on the negative side. I would rather approach this on a positive level.

Mr. Gillies: You do not feel you should have to complain about it. You feel some sort of fair treatment should be a matter of right.

Mrs. Lalumiere: I think it should be.

Mr. Gillies: The last question, which comes right back to what we are doing here, is this: Do you believe that if a system of equal pay for work of equal value were in place, it would show quite clearly the work you are doing is equivalent in skill, efforts, working conditions and responsibility to some of the others you have outlined which are higher paid?

Mrs. Lalumiere: Yes, I do.

Mr. Callahan: There is no question the field you are in suffers from gender discrimination. That is probably not just the case within the government but broadly across the private sector as well, from my general experience.

Mrs. Lalumiere: I believe so.

Mr. Callahan: You would probably find difficulty if you were trying to compare equal work for work of equal value, because you would probably find they are making the same as you are in a sense; but you certainly bring before us a very genuine concern in terms of equity and justice for the responsibilities you seem to have.

I was going to ask if you belonged to a union, because it sounded like you were not being too well served if that was the situation. I would have thought that cause could have been fought very admirably before your employers.

Mrs. Lalumiere: My first approach was to go to my own supervisor and plead my case. She is so busy with her own duties as purchasing agent, and I am just a small person. How much time is she going to devote to one person? It is hard to raise interests when you are only one person fighting for--

Mr. Callahan: And when you like your job too it becomes very difficult. I can empathize with your position--not just yours, but probably that of people in a similar type of occupation across this province. Probably the only time we recognize it is when we put on our dress or pants in the morning and realize it did not fall out of the sky; it was done by people who were skilled.

I am not certain whether the comparisons would be there to electricians, etc., but it sounds like a very inequitable arrangement. I appreciate your coming forward, because it does give me a great deal of food for thought in terms of the stark reality of the injustice, basically on a gender basis.

Mr. Charlton: Part of what I wanted to ask has already been asked, but I would like to ask one additional thing.

Essentially, you said you have been attempting to have your employer analyse your position, to compare it more broadly with the other jobs in the centre. The response, as I take it from your presentation, has been to say: "No, I am not going to analyse your position. You are a I, not a II, because nobody works under you." You are saying there has to be some mechanism in place to force that analysis to go on.

Mrs. Lalumiere: Right. That is exactly what I am saying.

Mr. Charlton: That is all you are asking for.

Ms. Gigantes: Following on some of the analysis suggested by Mr. Callahan, I wonder whether he meant to suggest that if someone doing this type of work in the public sector were compared to someone doing it in the private sector, there would not be much forward motion of the pay level. Is that what he was trying to suggest?

Mr. Callahan: I say that without an extensive knowledge of it, but historically we have all heard what happens to seamstresses and people in that category; they are made to work very hard and yet the pay levels are not significant. I cannot categorize that as gospel, but that is my understanding.

Ms. Gigantes: You are not proposing that we compare the public sector employee in this field with the private sector employee?

Mr. Callahan: I do not think it would assist her. That is my feeling.

Ms. Gigantes: That is not the object of equal pay legislation, in any case, is it?

Mr. Callahan: I appreciate that. It is something of a similar--

Ms. Gigantes: As someone who has done both amateur sewing and amateur plumbing, in my view, amateur sewing takes a lot more skill. I am sure it does on the professional level too.

Mr. Callahan: I cannot do either one of them; so I cannot comment.

Mr. Gillies: Go to amateur law.

Mr. Callahan: I am pretty good at that. I have been practising for a long time.

Ms. Gigantes: I get paid the same as you guys for doing that.

The Acting Chairman: Do you have any other questions, Mr. Callahan or Ms. Gigantes? If not, I have one question. How many hours a week do you work?

Mrs. Lalumiere: Forty hours.

The Acting Chairman: Are there any other questions? I want to thank you for coming and sharing with us your experience and concerns. We appreciate it very much.

Mrs. Lalumiere: You have been very patient.

The Acting Chairman: That ends the briefs for this morning.

The committee recessed at 12 noon.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

WEDNESDAY, SEPTEMBER 24, 1986

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

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O'Connor, T. P. (Oakville PC)

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Partington, P. (Brock PC)

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Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Callahan, R. V. (Brampton L) for Ms. Hart

Dean, G. H. (Wentworth PC) for Ms. Fish

Gillies, P. A. (Brantford PC) for Mr. Brandt

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

Poirier, J. (Prescott-Russell L) for Mr. Offer

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Clerk pro tem: Arnott, D.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Silk Klein, S., Policy Advisor, Labour Policy and Programs

From the Ontario Advisory Council on Women's Issues:

Ion, S., President

Ramkhalawansingh, C., Chair, Employment Committee

Lane, M. E., Legal Counsel; with Dunbar, Sachs, Appell

From the Ontario Chamber of Commerce:

Gray, D., Chairman, Employer/Employee Relations Committee

Kenny, W., Member, Employer/Employee Relations Committee

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, September 24, 1986

The committee resumed at 2:07 p.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting Chairman (Mr. Partington): We are ready to commence proceedings this afternoon. The first presentation will be from the Ontario Advisory Council on Women's Issues. Would you care to come forward and sit in the chairs in front of the microphones, please? I mention before we get started, as I am sure you are aware, your presentation will be one hour in duration and will consist of your making a presentation to us and, I hope, allowing some time for members of the committee to ask questions about your presentation. Perhaps you can carry on and introduce yourselves.

ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES

Ms. Ion: Good afternoon. Thank you for giving the advisory council an opportunity to express its views.

My name is Sam Ion. I am the president of the Ontario Advisory Council on Women's Issues. Beside me is Ceta Ramkhalawansingh, chairman of our pay equity committee. On Ceta's right is Marion Lane, our legal consultant. Behind me, we have Sandra Kerr, the vice-chairman of the council; Dorothy Kirby, a member of the committee; and Bridget Vianna, our executive officer.

The Ontario Advisory Council on Women's Issues is an arm's-length advisory body to the Ontario government on all matters pertaining to women. The mandate of the advisory council is to monitor legislation, policies and programs, make recommendations for new initiatives and stimulate public discussion throughout the province.

Last February, the advisory council circulated broadly a draft response to the government's green paper on pay equity. On March 7, 1986, the advisory council sponsored an Ontario women's forum on pay equity that drew participants from across the province. Oral presentations at that forum and briefs subsequently received by the advisory council on the green paper have been reviewed and incorporated into this response.

The advisory council has consistently supported the need for pay equity. Our concern with the government's green paper is that pay equity has been too narrowly defined and methods of implementation may undermine the objective to be achieved. Our objective is equal pay for work of equal value as a fundamental labour standard based on comparisons according to job content. The objective of the government, as illustrated in its basic premise and its proposed methods of implementation, is significantly more limited. We fear that pay equity as a fundamental goal of this government may be a pale imitation of the real thing.

As part of its research and public education mandate, the advisory council undertook a detailed study of Bill 105. As most organizations have not yet completed their review of Bill 105, this additional analysis of the bill was undertaken by the advisory council at the request of women attending the pay equity forum. This response to Bill 105 will assist many organizations as they prepare their own responses to this legislative proposal. We have subsequently in recent months been in contact with many organizations that have utilized our analysis in their own responses.

Bill 105 epitomizes our concern. In our view, the proposed bill is an ingenious sleight of hand, an effort to meet the public demand for pay equity with minimal commitment to the fundamental principles of equal pay for work of equal value. It is an approach that will not provide real pay equity to the majority of employees within the public sector and that bodes ill as a precedent for pay equity implementation in the private sector.

We have communicated our views on this bill to the minister responsible for women's issues (Mr. Scott) during several lengthy meetings.

I now would like to have Ceta Ramkhalawansingh talk in terms of the recommendations we have made on Bill 105.

Ms. Ramkhalawansingh: We note that in your ad for these public hearings Bill 105 provides for pay equity for only a limited number of female employees in the Ontario public service and does not provide for extension of the pay equity principle to the private sector. Precisely the point we wish to make is that the bill is significantly limited and does not address two areas we think should be addressed.

The dual approach to pay equity undertaken by the government, one bill for the public sector now and another at some later unspecified date for the rest of the economy, is fundamentally misconceived. The advisory council regards equal pay for work of equal value as a basic labour standard--

Mr. Callahan: Excuse me. I do not want to interrupt the speaker, but are you reading from the brief?

Ms. Ramkhalawansingh: Yes, I am.

Mr. Callahan: Can you tell us where?

Ms. Ramkhalawansingh: I am on page 3. We are not going to read the whole thing. We will be going through sections of it.

Mr. Callahan: Perhaps you can tell when you are referring to it so we can follow along with you. It is page 3 of the brief.

Ms. Ramkhalawansingh: The advisory council regards equal pay for work of equal value as a basic labour standard applicable to all employees. All sectors will have their unique problems with implementation and all sectors should be required to put their house in order as soon as possible. Two separate bills such as are being proposed merely codify inequality in access to a basic standard and create an unjustifiable pay equity holiday for the bulk of employers at the expense of the women of Ontario. We urge the government to bring forward comprehensive pay equity legislation immediately.

Our recommendations on this are that the government should table comprehensive draft legislation immediately, one bill for all sectors of the economy.

The legislation should regard pay equity as a basic labour standard, equally accessible to individuals and groups, and the draft legislation should ensure that the methods of implementation are broadly defined, so that equal pay for work of equal value is achieved. This, of course, means comprehensive enforcement mechanisms have to be in place, and it also means the government will have to consider a comprehensive employment equity strategy. I will not go into the details of this. Tied into these recommendations is the notion that you have to deal with a fairly broad definition of "establishments."

At this point, I would like to turn to page 34, so we can get directly into our recommendations with respect to Bill 105.

On February 11, 1986, the Minister of Labour (Mr. Wrye) tabled Bill 105, the Public Service Pay Equity Act. We congratulate the government on this initiative.

Unfortunately, Bill 105 is an ingenious disappointment; ingenious in the sense that it offers the potential for wage adjustments in the name of pay equity for large numbers of Ontario public servants at the least possible cost to the public purse; ingenious also in that it perpetuates historical relationships between job classifications and thereby seeks the support of the powerful public sector unions; ingenious also in that the sense that the basic approach to implementation, if not the language of the bill and the timetable for pay adjustments, is simplistic and relatively expeditious. As a first step to pay equity in the public service, Bill 105 may have some value; as the total government approach, however, it falls very short of the real thing.

The Ontario Advisory Council on Women's Issues is strongly of the view that Bill 105 will not provide pay equity to women in the public service. The title of the bill, its express purpose, its definition of pay equity and its operation indicate the limited application of the bill. We are concerned that women of Ontario are not bought off by what can only be described as a pale facsimile of equal pay for work of equal value. The fundamental principles of bill 105 are so flawed that we wish to put the government on notice that Bill 105 itself should be treated as an interim initial adjustment only.

Our recommendations on this are that Bill 105 should be recast as an interim initial adjustment, subject to complete, accurate pay equity adjustments after a comprehensive job evaluation system has compared all job classifications--not groups of jobs; every single job--within the public service. All these jobs should be compared with each other rather than as contemplated with the current bill.

The government should initiate immediately the development of a comprehensive job evaluation system within the public service and related agencies. An alternative is that Bill 105 should be sent back for substantial redrafting, or some consideration might even be given to withdrawing this bill.

The language and format of the bill: The government has drafted a bill that is extraordinarily complex and convoluted. For example, there is a reference in section 7 to the development or selection of a job evaluation system and its application to positions in the predominantly female and predominantly male groups of jobs. This seems to indicate that all such groups of jobs will be compared. It is, however, misleading because that is further qualified under section clause 7(d) and subsection 5(1), which indicate that pay equity and the adjustments relate only to the representative job level in a predominantly female group of jobs. Actual comparisons between other groups of jobs are irrelevant.

14:20

The implementation timetable set out in section 11 is particularly incomprehensible. To decipher this section requires the use of a flow chart, and we will be doing that with you later. Given the limited number of bargaining units in the public service and the relatively small number of unorganized employees, there seems to be little justification for distinctions among the various plans. In Manitoba, all employees are covered by a single plan immediately. This makes sense, because many disparities in pay occur across bargaining units and between the organized and unorganized sectors. We feel the artificial complexities of all these various plans are merely mechanisms for delay.

Our second recommendation is that the language of the bill needs to be simplified and clarified so that it can be understood by everybody. Definitions need to be qualified and misleading references removed and, further, parts III to VI--plan distinctions--should be removed.

There are conceptual defects in Bill 105. The advisory council has applied the principles of pay equity to Bill 105, and the draft legislation clearly falls short of our expectations. We are concerned by the bill's objective, the limited coverage, the preoccupation with gender predominance at the expense of job content, the exclusions, the minimal pay adjustments, the scheme for implementation and the mechanisms for enforcement. All these will seriously limit the possibility of achieving pay equity.

We note that the primary focus of the bill is not comparisons of job content, as equal value requires, but gender predominance. We are adamantly opposed to statutory criteria for gender predominance. The proposed criteria for predominantly female--60 per cent--and predominantly male--70 per cent--are arbitrary and restrictive. They can create a new quota system that will undermine all employment equity initiatives.

The potential for additional designations by agreement or by regulation is an illusory offer of flexibility. The government, which is the employer, or the government wearing the hat as Lieutenant Governor in Council passing regulations, has a veto over any extension or designation. Neither process is subject to debate in the Legislature, and there is no right to inclusion.

In addition, Bill 105 provides no opportunity for unorganized workers to initiate extended designations. Given that the government now appears committed to statutory gender predominance guidelines, what expectation can we have for the future that the government will be much more liberal in its approach on a case-by-case-basis?

Our recommendation here is that pay equity should be available to everyone in the public service on the basis of job content. I refer you here to the current employment equal pay provisions in the Employment Standards Act, which looks at job content and not at the individual. This leads us to the title and the purpose of the bill. References to gender predominance should be deleted. Therefore, it also follows that no gender predominance guidelines should be codified by statute.

With regard to groups of jobs and representative job levels, the bill explicitly addresses only discrimination between groups of jobs. It provides no opportunity for individual comparisons--one woman versus several men or several women versus one man. We are limited by those codified percentages and so on.

The bill is even more restrictive, because it provides for pay equity comparisons between only "the representative job level in a predominantly female group of jobs." We assume that this means the lower levels with the greatest number of employees. In other words, within each group of jobs only one comparison will take place.

What this means is that the existing hierarchy between all jobs is maintained, and adjustments will take place only for that representative job level and apply to all the other jobs within a sequence. Thus, even if inequities can be demonstrated between other jobs within an occupational hierarchy, nothing can be done about it, given the way in which this legislation has been drafted.

The basic flaw in the government's approach is that Bill 105 does not anticipate one actual job evaluation scheme applied to all jobs or classifications within the public service, nor does it anticipate actual comparisons between all jobs or classifications within that scheme. We feel that Bill 105 codifies one approach to job comparison, and that comparison is that representative job level.

Our recommendation 4 is that pay equity in the public service should be based on a comprehensive job evaluation scheme and actual comparisons between all jobs or classifications within that scheme. The comparison of benchmark jobs and the related across-the-board increases approach imposed by Bill 105 should be redefined as an interim initial adjustment only, pending the results of a comprehensive evaluation scheme.

Exclusions: We are opposed in principle to any statutory exclusions, so that section 8 of Bill 105 should be deleted.

Pay adjustments: The proposed statutory provisions with respect to pay adjustments are minimal, and we have detailed on page 42 the problems with all of these. Our recommendation 6 on page 43 is that the method of wage adjustment should not be codified at the lowest comparable job rate.

Subsection 5(4) of Bill 105 should be deleted.

Subclauses 11(3)(a)(i) and 11(3)(b)(i) of Bill 105 should provide for immediate first adjustments other than on the 1988 and 1987 dates that are proposed. This 18-month delay should be deleted.

If part V and part VI plans are to be phased in, which we oppose, the first adjustment in clauses 11(3)(c) and 11(3)(d) should not be tied to last payments in earlier plans.

If you are having trouble understanding what all these parts in all of these sections mean, can you imagine what difficulty employees are going to have understanding what all these parts mean? This is what we mean by saying the bill is unnecessarily convoluted and detailed. Really, what we are attempting to do is very simple.

We feel Bill 105 should require back pay adjustments from the date of proclamation. There should be a legal obligation for payment when the law goes into effect.

Subsection 11(7) and clause 19(2)(m) of Bill 105 should be deleted.

Time frame for the development of pay equity plans: Depending on how the bill actually applies to various bargaining units and unorganized groups of

jobs, any pay equity may not be available until several years down the road, when the part VI plans become fully effective. We have concerns about the time frame proposed for developing the plans. That is on page 44.

The 90-day time frame for filing plans appears to substantiate our suspicion that the comparisons will be conducted in a perfunctory fashion. How do you develop a plan in 90 days? we would like to know. In our view, more time is required at the earlier development stage and less time for the first adjustments.

The role of unorganized employees: Bill 105 is also weak in its treatment of the unorganized sector. The bill makes no provision for the participation of unorganized workers in developing pay equity plans. The Manitoba Pay Equity Act, by contrast, creates a role for employee representatives acting on behalf of unorganized workers.

14:30

On page 45, when we get to the rights of employees--we have reviewed the many amendments the government has tabled--we note from our original brief that three very minor amendments have been made. One is to provide protection from reprisals for employees who make complaints. However, the other two issues we have raised here are with respect to posting requirements for the plans--the posting requirements in the amendment applies only to the unorganized sector--and from what we see, there is no requirement for public access to these pay equity plans.

Therefore, our recommendations with respect to all these issues are that the timetable for the development of pay equity plans should be extended in a way similar to the Manitoba model to allow for a comprehensive job evaluation scheme and actual comparisons among all jobs--

Mr. Callahan: May I jump in on that last one? I believe public access to pay equity plans filed with the commission is in the legislation.

Ms. Ramkhalawansingh: It does not say "public access."

Mr. Callahan: I am sorry?

Ms. Ramkhalawansingh: I do not think it says "public access." I think it refers to "employees' access."

Mr. Callahan: I read through it and I thought I had found it.

Ms. Lane: My understanding is that the recent amendment that is expected to be tabled is going to restrict that to employers, employees and bargaining units.

Mr. Callahan: The existing act does contain that.

Ms. Lane: Indeed it does, but I understand the amendment is limiting that.

Ms. Ramkhalawansingh: Alternatively, the benchmark comparison should be restructured as an interim adjustment.

Bill 105 should be amended to provide for the participation of unorganized workers through employee representatives, as in Manitoba, and Bill

105 should be amended to protect the rights of employees, such as those just described.

Page 47, administration and enforcement: The government has not fully appreciated the complexity of creating mechanisms to enforce rights against itself, or perhaps it has. We are opposed to ministerial intervention to appoint a single arbitrator, and perhaps even a second arbitrator, to resolve an impasse in developing parts III and V plans under section 13.

The minister is a member of the government and, as employer, is party to the proceedings. There is an inherent conflict of interest which may make the appointment of an arbitrator or a particular nominee subject to extraneous political considerations. There should be an automatic referral to tripartite arbitration as a matter of right. The arbitration board should be chosen in the usual fashion with employer and employee representatives and an independent chairman.

Our recommendation 8 is that subsection 1(1) of Bill 105, the definition of "arbitration," should be amended to provide for a tripartite arbitration board.

Section 13 of Bill 105 should be amended to provide for referral to tripartite arbitration as a matter of right without reference to the minister.

Section 13 of Bill 105 should be amended to set out the specific remedial powers of arbitration boards, including the power to make binding orders, and to provide that such orders have the same effect as orders made by the Pay Equity Commission under subsection 20(4) and are subject to enforcement as a court order as in section 21.

An independent commission: It is absolutely vital, for the credibility and legitimacy of the entire program, that the Pay Equity Commission actually be and be seen to be independent of the government. It should have its own resources and be free to exercise its powers and deploy what staff it requires without reference to the government, which we must remember is the employer.

Although it would be useful to have access to government services and facilities if the commission deems it necessary, the commission should not be required to use such facilities or to depend on secondments to perform its functions. Similarly, the commission should not have to seek Management Board approval to engage professionals or experts on contract. The reason is that these experts may well be hired to testify against the government as employer. We feel that absolute independence is necessary.

Although this may be a customary practice with respect to other boards and agencies, it is inappropriate when the government itself is a party to the proceedings. Our recommendation 9 is that subsection 17(6) of Bill 105 should be amended to provide that the commission shall have its own independent resources and may use government services or facilities if appropriate. Subsection 17(7) of Bill 105 should be amended to delete any requirement of Management Board approval; the commission should have substantial independence and be directly accountable to the Legislature like the Ombudsman.

The role of the commission: The intention of Bill 105 is that the commission assume a supervisory, proactive role in implementation and enforcement, yet there is no provision for an ongoing supervisory role for the commission. We note, for example, that section 26 of Bill 105 does not empower the commission itself to initiate complaints for gender-based compensation

practices after the completion of adjustments.

There is also some confusion in the roles Bill 105 assigns to the commission. On the one hand, the commission has a duty to review every pay equity plan filed with it and to decide whether it complies with the intent and purposes of the act. It also has the power to impose plans. At the same time, it has the power to inquire into, investigate and determine complaints under part VIII. How can the commission, which is charged with review of all plans, then sit in judgement on matters in which it has already participated? We feel, therefore, that it is imperative an independent tribunal be created to deal solely with the adjudication of all disputes.

Our recommendation 10 is that the ongoing, proactive role of the Pay Equity Commission should be examined and powers defined accordingly, including the power under section 26 to initiate complaints and that an independent appeals tribunal should be established to adjudicate complaints.

Right to a hearing: The advisory council is particularly disappointed that Bill 105 does not provide an absolute right to a hearing. The right to a full hearing, including an opportunity to know the case against one, to present one's case and cross-examine witnesses is essential to the procedural fairness now widely acknowledged by the courts wherever statutory rights are at issue.

Our recommendation 11, therefore, is that subsection 18(6) should be amended to provide an absolute right to a hearing and that Bill 105 should specify that the Statutory Powers Procedure Act applies to all proceedings before tripartite arbitration boards, the commission and the tribunal under this act.

Complaints: The provisions for complaints set out in part VIII are particularly restrictive; they specify limited types of complaints and impose strict limitation periods. In our view, this approach to complaints is misconceived, and our reasons are detailed there.

Our recommendations, which are on page 53, are that section 25 of Bill 105 should be amended to delete specific references to types of complaints and the proposed limitation periods; the general complaints provision of section 26 should apply immediately upon proclamation, and provision should be made for third-party complaints and commission-initiated complaints; part VIII should include an absolute right to a hearing of complaints and protection from reprisals.

14:40

Assorted complaints regarding implementation and enforcement: We have here some very general issues we would like to raise.

The subsection 1(1) definition of "compensation" is a good one, and we do not ever want to see the government amend this definition of compensation by the Lieutenant Governor or by regulation of the government. Therefore, the powers set out in subsection 28(1) should be deleted.

The subsection 1(1) definition of "group of jobs" is not adequate.

Section 2 should provide that this act has primacy over all other acts and should include related collateral amendments to the Ontario Crown Employees Collective Bargaining Act and the Public Service Act.

Paragraph 19(2)(1) should be amended to enable employees also to apply for extended designations. I believe only employers have that right.

Subsection 22(2) allowing for reconsideration of decisions has significant potential for abuse.

Our recommendation 13 is that amendments should be made as indicated to paragraph 19(2)(1), section 21 and subsection 22(2) and that clauses 28(1)(b) and (c) should be deleted.

I gather from the recent discussions in the paper that there is some agreement with some of the conceptual flaws we have discussed. Two issues we would like to raise have to do with coverage and the need for employment equity.

With respect to coverage, there is considerable concern that the bill does not extend to the broader public sector. It is our position that the remedy offered by Bill 105 is minimal in any event and can be regarded only as a first step. If we were to extend the approach to the broader public sector, we do not believe this would be unduly disruptive and in any event, what we would find in the broader public sector is much more likely to be helpful with respect to what the government may attempt to do in the private sector.

If we extend to the broader public sector, we think the government could also implement contract compliance programs through the various agencies and organizations which purchase goods and services from various organizations. They could also implement contract compliance programs which would require those people who receive funds from them to implement pay equity plans.

This also relates to our definition of "establishment," which we feel should be as broad as possible and should include a corporate definition of "establishment."

Our recommendation 14 is that Bill 105 should be extended to include the broader public sector as defined by the wage restraint laws and that contract compliance within the public sector should be implemented immediately so that organizations which purchase goods and services from the government should be required to implement pay equity.

With respect to employment equity, we all know pay equity is only a very small part of the employment equity package. There are many other factors that impact upon the wage gap between men and women which can be addressed only through a comprehensive employment equity program. Therefore, the Pay Equity Commission should be named the employment equity commission and charged, among other things, with the supervision of mandatory affirmative action plans within the public service.

Our recommendations with respect to this are that the Pay Equity Commission should be renamed the employment equity commission charged with the administration and enforcement of all employment equity issues and that Bill 105 should include mandatory affirmative action.

In the front section of this brief, on pages 27 and 28, we have defined what we see as a comprehensive approach to employment equity. I refer you to that; we will not go through it with you. One of the reasons for including that in this document again, as we noted at the beginning, is that there should be one bill. This is a labour standard. We should be looking at job content, not at the sex of people who perform various jobs, and we should be looking at a comprehensive employment equity program.

I would like to ask Marion Lane to take us through that very complex flow chart that one has to look at in order to read this particular legislation.

The Acting Chairman: I might just indicate that a little more than 20 minutes are left. Bear in mind the committee does want to ask some questions.

Ms. Lane: That is fine. I will not take very long.

I would like to pass out a preliminary schema for the time frame because I think it is helpful. As you can see from this preliminary schema, even at its best, it is going to take many years for this proposal to be implemented. When we undertook our consultation with respect to Bill 105, we were advised by people who will be implementing it themselves that a good proportion, over 90 per cent, of most jobs will be covered in the first round of negotiation, in the first plan.

The majority of people are unionized and those unions cover a large number of the prospective employees. Therefore, the part III plans will cover a good number of people. Where people will be excluded--for example, secretaries who are in confidential positions and are not part of the bargaining unit for that reason--nevertheless, they will be evaluated because it will be necessary to do so at the first stage.

We were also advised that there is not going to be a large number of plans. Given the fact we are doing a comparison of representative job levels only, there is not going to be a significant number of plans to cover all the various sectors that are involved. We do not know for sure exactly how many there will be, but there is not going to be a large number.

Given that is the case, we do not understand why it is necessary that this be dragged out for many years and why we in Ontario cannot adopt, as was adopted in Manitoba, one comprehensive scheme at the very beginning that applies to both bargaining units and nonbargaining units and that all would be implemented immediately.

Even if you look at the relevant section, section 11, you can see that it is going to be 90 days to develop a plan and then you have to have the first adjustment made within 18 months. There seems no justification for that 18-month delay. Subsequent adjustments are at the rate of one per cent a year. It is the same thing with the part IV plans, which are for the nonbargaining units. If you turn to the part V plans, which are the joint plans involving all bargaining units, and then the part VI plans, which are comprehensive involving everybody, you see that the first adjustments there are not going to be paid out until 12 months or 18 months after or when all the adjustments under the previous plans are paid.

Again, the potential in the future is very significant. If there is a delay in paying out part III plans or part IV plans, there will be no first adjustment on part V or part VI plans until all those previous plans have been paid out.

The time scheme here, even as abbreviated by the paper, could extend into 1991 and 1992, depending on when the part III and part IV plans are paid out. In our view, this is incredibly complex for what, if you bring it down to its bare bones, is a relatively simplistic comparison of representative job levels. Those representative job levels could be adjusted relatively quickly, pending a comprehensive job evaluation which is what we would like to see.

Mr. Gillies: I thank the council very much for its presentation. Many of the changes you have proposed in your brief closely parallel the amendments our party has proposed. You would almost think we had collaborated on them.

Mr. Poirier: Almost.

Mr. Gillies: In fact, we did not, because I announced our position back in April and this paper came out in June, I believe.

14:50

Ms. Ramkhalawansingh: We prepared our very first response to some of these issues at the end of January because, as you will recall, we had our meetings in early March.

Mr. Gillies: Yes, that is right.

I have just a couple of questions. One deals with the question of organized and unorganized sectors of the public service. Can you tell us a bit more about the Manitoba scheme? The minister maintains that the amendments we are proposing would be very difficult because of the mix of organized and unorganized workers in the broader public sector. Your brief seems to indicate it is not a problem. I wonder whether you can tell us a bit more about that.

Ms. Lane: I guess I would like to know what difficulties have been experienced in Manitoba, because it seems to me that in Manitoba, first of all, the unorganized sector is included, and there is a somewhat longer time frame for developing their plans, but it is only an extra year from what the other ones are. It includes the broader public sector and, in our view, that seems appropriate. Ceta has discussed why the broader public sector should be brought in.

Our view is that they have allowed for unorganized employees to participate in the development of a plan. Manitoba has done that. It is set out by regulation how they would be elected and so forth and become employee representatives. They have the same powers and the same obligations as a regular bargaining unit. We do not understand why that could not be used as a model in Ontario as well, because Bill 105 leaves the development of unorganized plans to the employer, so that government is responsible for developing plans for the unorganized sector. We do not think that is appropriate. It provides for no representation.

The other issue that comes up within Bill 105 is that it is, again, the employer who can request that a designation be extended to a group for the gender predominance issue, and there is no opportunity for unorganized employees to make that request. They are dependent on the government to do that, whereas in Manitoba the unorganized representatives are considered partners in the development of a plan and they have the same obligations and responsibilities. That is not true here.

The Acting Chairman: Mr. Polsinelli has a supplementary to that question.

Mr. Polsinelli: Mr. Gillies, with your permission, it deals with the Manitoba plan. Would you not agree that there are many similarities between the Manitoba plan and the proposed Bill 105 that we have before us, and also that there are some respects in which this bill goes further than the Manitoba

plan? I refer you specifically to the absolute cap on the adjustments in the Manitoba plan, which fixes the adjustment at one per cent of payroll to a maximum of four per cent, whereas this is open-ended. Manitoba has also taken a two-stage approach with respect to the narrow public sector and the broader public sector that is very similar to the approach we are contemplating for Ontario.

Ms. Ramkhalawansingh: There is one major difference between the Manitoba plan and the plan proposed here, and that is that the Manitoba plan contemplates a comprehensive job evaluation scheme. Thus, notwithstanding the fact that they are using gender predominance and so forth, which is similar to Ontario, at the very least they are conducting that complete evaluation so that one assumes that at some point down the road they will be in a position to make those further adjustments that would be necessary.

Ms. Lane: That is a fundamental difficulty. We do not get to a comprehensive comparison, and even then it is not based on evaluation. We never do a comparison based on actual job evaluation in Bill 105. That is just not contemplated by this scheme at all. It is a comparison of the representative job levels only, and all the other comparisons that may be possible are defined out of the legislation. In that way, ours is much more restrictive; it is much more notional than something that is based on actual comprehensive job content.

Mr. Polsinelli: My point was a fairly simple one in the sense that you made quite a few references in your submission to the Manitoba scheme--I apologize for missing half of your submission, but I will read it at a later point--but there are positive aspects of the scheme that have been implemented in the Ontario plan. There are perhaps other aspects of that scheme that we have chosen not to implement. In some ways, our legislation goes further; in some ways, our legislation is different from the Manitoba scheme. That was basically the point I was trying to bring across.

The Acting Chairman: Can we go back to Mr. Gillies?

Mr. Polsinelli: Thank you, Mr. Gillies. I appreciate your understanding.

Mr. Gillies: Not at all, Mr. Polsinelli.

Mr. Polsinelli: After you, Gaston.

Mr. Gillies: After you, Alphonse. Let us go back to the question of gender predominance. I go back again to the comments made by the minister yesterday. He does not feel a true pay equity scheme can be implemented without the overriding consideration being the gender issue. In other words, to him, the issue seems to be the concentration of females in certain types of employment and then, if you will, the systemic discrimination in terms of wage rates. How do you reconcile that with your view, one for which I have a lot of sympathy, that what we should be looking at is the content of jobs?

Ms. Ramkhalawansingh: There are some gross inequities within the existing pay schemes. What one can do is use gender predominance for research purposes; one would use it to identify where the problems are. Actually to use that as a basis for providing a right and as the basis for making adjustments is ridiculous. You use that to identify the problem; you do not necessarily use it as the way of solving the problem.

The way in which you go about solving the problem is completely different. You do your comprehensive gender evaluation system, you look at job content and you adjust the wages on the basis of what a person does, not what her sex is, what the position is, how long she has been in a particular job, or the relative percentages. That seems to me to have nothing to do with fairness or equity.

Ms. Ion: If you looked at the content of the jobs, the inequities would be glaring.

Mr. Gillies: You believe that the gender predominance yardstick could almost exacerbate some of the inequities, perhaps by encouraging ghettoization?

Ms. Ramkhalawansingh: It may not necessarily encourage ghettoization. What it does is provide a first step for solving a problem, but it does not replace the need for doing a comprehensive equal pay for work of equal value program or actually looking at pay equity in its real sense. It is an emotional sop to the problem.

Mr. Gillies: Can we talk about time frame for a moment? I wonder if we could draw upon your knowledge and research into Manitoba. How long did it take them to set up their scheme and get it working?

Ms. Lane: My understanding is that they still are. For the narrow public service, it is one year to develop the plan and then another year to implement. For the broader public service, it is two years to develop the plan and then implementation following that. Remember, they are dealing with a broader public service, including hospitals and universities and the whole range of publicly funded agencies, which are not included in this bill at all.

Mr. Gillies: Yes, although we propose to include them. Did they put both the narrow and broad public service in one bill but with two different time frames for implementation?

Ms. Lane: Yes, they did.

Mr. Gillies: I see. That is an intriguing idea. One further question, if I may, on the nature of the commission. This is the question of a truly independent commission as opposed to administration from within the government. Can you give us any information on the experience in other jurisdictions in that regard? How are they doing that in Manitoba? How are they doing it in Quebec and in the federal jurisdiction?

Ms. Lane: In Quebec and in the federal jurisdiction, the right to equal value is built into their human rights legislation--it is a different kind of right than what we have here--and it is administered by their human rights bodies. They are not, necessarily, proactive in the same way as what is being proposed in Bill 105 or as what we would like to have.

Ms. Ramkhalawansingh: They are complaints-based.

Ms. Lane: Complaints-based only. My understanding of the Manitoba scheme is that they have tried to set up an independent pay equity commission. I am not quite sure of the mechanics, whether it has access to government funds, is limited in any particular ways or whether it is required to use the civil service. I do not know the details of that or whether that is even spelled out in their legislation.

What concerns us is the explicit details that are in Bill 105, which mean that even if you were going to hire a contractor for a small job to help you evaluate a plan, you are required to go to Management Board for approval of that. The requirement that you "shall" use the Civil Service Commission rather than you "may" use it may impose a straitjacket on the commission.

15:00

Mr. Gillies: I hope we will be able to address in the amendments some of your concerns.

Ms. Gigantes: Thank you for your presentation. You have given us plenty to chew over here. There are three areas I would like to follow up.

The Acting Chairman: Excuse me. Some members of the committee cannot hear.

Ms. Gigantes: You are kidding. Is that better?

The Acting Chairman: Yes.

Ms. Gigantes: In terms of dealing with this bill, you suggested that we should consider possibilities ranging from withdrawal and starting all over again with one bill for the whole work force through extending the bill to trying to make the bill work as it exists in the framework described in the bill, in other words, in the 1.5 per cent of the work force that the bill identifies as its subject.

If given your druthers, what would you like to see? I am sure you are aware of the whole discussion that went on yesterday, where we proposed on the opposition side to extend the bill to cover the public sector that had its wages restrained in 1982-83. The minister is making grumblings about how the opposition is out to sabotage the bill and about how this whole effort may not be workable from the government's point of view. What is your view on that? What is the best you are looking for in this process?

Ms. Ramkhalawansingh: The best we are looking for is clearly outlined in our recommendations, and we have laid out the options. At the very minimum, the government, in making a decision about amendments or expansions, has to provide some protection and some indication with respect to pay equity for the public service. At the very minimum, it has to indicate its intention to do that.

Ms. Gigantes: When you use the words "public service," do you mean the broad public sector?

Ms. Ramkhalawansingh: I think it is clear in our brief that we make reference to the broader public sector. I think that if the bill is withdrawn--of course there are no protections available to anybody, and that is our concern with its withdrawal. If that happens, will it ever see the light of day again? Will anything come forward? We throw that in as a possibility, but I am not sure we necessarily want that to happen. We would like to see a better bill.

Ms. Gigantes: Yes, so would we all. You will be amused to know that you are not the only people who say "public sector" and mean public service or vice versa. Ministries have done that too. They constantly refer to this as the pay equity bill for the public sector. It is not.

Ms. Ramkhalawansingh: The concern around extending it to the broader public sector is a political concern, which is that if it is extended to the broader public sector, given the pressures that will be brought to bear upon the government from the private sector, does it then mean that, since we have it for the public service and the broader public sector, the private sector will therefore be off the hook?

That is a political consideration. They will have done it for the public sector. Then next fall we can carry on with the private sector stuff ad infinitum, ad nauseam, and never do anything with it. This is a political judgement that the opposition parties have to make in considering broadening at this stage. There are pros and cons on both sides.

Ms. Gigantes: What would you have us do?

Ms. Ramkhalawansingh: We would like to have the government write one bill for everybody and we would like to have a bill which has no gender predominance and which has comprehensive job evaluation. Moreover, we would like to have a bill with all sorts of other things in it. We would like to see a definition of pay equity and enforcement systems for pay equity that actually mean something. I am not personally convinced that, with its present definitions and exclusions and all the limitations upon it, this bill will actually do a whole lot.

Ms. Gigantes: It seems to me more like a bill designed to set up four-year pay equity plans than anything else. That seems to be the object of the bill.

Ms. Ramkhalawansingh: We have communicated all our concerns to the ministry responsible for women's issues.

Ms. Gigantes: From your discussions with the minister or ministers you have spoken to recently, did you get any indication of when you might expect private sector legislation?

Ms. Ramkhalawansingh: He just said in the fall.

Ms. Gigantes: We heard that last fall.

I have one more question that has to do with unorganized workers. While I have a great deal of sympathy with your concern to have unorganized workers participate in the plan, when I think about that in very practical terms, I begin to wonder whether we are not saying things that will lead people down the garden path where they will run into some thorny bushes.

We know that people who have made complaints under existing equal pay for equal work legislation have been fired successfully and without repercussions in Ontario. The administration of that act has been a lot less than one might desire or than most people expect is actually happening in Ontario.

When it comes to a question of unorganized workers being called upon to select spokespeople to participate in the plan, I wonder about the reality of a partnership in the discussions and whether the people who get into discussion and perhaps confrontation with an employer over an equal pay plan might not find themselves eased out of jobs or have the work place made intolerable for them.

Ms. Ramkhalawansingh: I think your concern is real. If you review the front section of our brief, where we talk about the private sector, the issues also apply here.

We make the point that there are minimal labour standards in the province and that some efforts should be made to encourage unionization and so on. There is a problem with employee rights across the board, notwithstanding whether they are organized or unorganized.

Altogether I do not think there is a very healthy attitude towards employee rights in this province, which is not necessarily going to be solved by providing protection in this legislation.

Ms. Gigantes: I can see where organized workers, particularly in large groups such as the Ontario Public Service Employees Union, the Canadian Union of Public Employees and so on, would feel some sense of security about coming forward to negotiate a plan, but when I think of people, particularly women who are not organized even in the public sector, coming forward to try to do that, I wonder whether we are not saying nice words that could end up costing people a lot.

Ms. Ramkhalawansingh: But if there is a right to it enshrined in legislation--

Ms. Gigantes: There is a right for equal pay for equal work enshrined in legislation now, as you know, and it ain't working.

Ms. Lane: Part of that is because you need some support groups or statutory support for third parties that want to assist unorganized workers. That is one of the problems with Bill 105. It does not provide any legal status to employee representatives who may not be bargaining units or bargaining agents, and that is a problem. If you set up a legal clinic, if you have some extra advocacy resources available in the community to assist unorganized workers, they do not have any status or rights under this bill. I think it is a problem.

The question is: What is the alternative? The alternative in Bill 105 is to leave it to the employer and then to have it subject to review by the commission.

Ms. Gigantes: Or by complaint.

Ms. Lane: Yes, but I think to make a complaint effective those people are going to have to have access to some support or resources. I do not see any provision here for that.

Ms. Gigantes: Yes. I agree with you on that point.

Mr. Charlton: You are right that all the provisions we would require are not in the legislation currently.

I think what Ms. Gigantes is getting at is that we have been trying to think through this question of the unorganized and the subtle jeopardies we may put some of those people in if they are participating up front in the process. We have been trying to think through ways to deal with that.

Although we have some sympathy for this concept of representation, because in principle it is part of the whole democratic process we believe in,

we have been trying to think through how we can toughen up the other sides--the commission side, the complaint side, the access to information side and so on--to try to provide assurances that the unorganized will still be able to make the system work without jeopardizing themselves individually.

15:10

Ms. Lane: I understand some amendments are being tabled--I do not know who is tabling them--amendments to do with protection against reprisals and amendments to the complaint provision to allow for complaints in the event of reprisals or failure to bargain in good faith; however, there is no provision for third-party complaints. There is provision for employer-employee complaints but not for third-party complaints from someone other than the bargaining agent. That is one issue you might want to address.

If you are going to provide a mechanism to allow for group complaints for unorganized people, you might have to have a provision for third-party complaints. Then you will have to follow through so that these third-party complainants have the same rights as bargaining agents have for access to information, etc.

Mr. Callahan: I would like to thank you for the brief. It is certainly thought-provoking. I see a couple of difficulties in it. If I were in the opposition, where you do not have to watch the bank balance, I could say, "You can have everything," and that is, in essence, what you may see coming forward.

Your commission does an excellent job of advising on women's issues and you are representing the broad spectrum of women not only in the public service but also the people in the private sector, and you very astutely hit on the very sensitivity of there being only so much money in the bucket to begin with. There is no question about an inequity which has existed for a considerable period of time, which this government intends to remedy in bringing women up to a fair wage, recognizing the change in circumstances, the fact that women are no longer just working for pin money; in many cases, they are doing it to support single-parent families.

At the broad end of the spectrum, what happens now with this legislation will have a very dramatic impact on the way it is received. Speaking bluntly, in terms of a political standard in the private sector, if the effort here is unpalatable to the private sector, I do not think I would be saying anything out of the classroom by saying that from a political standpoint it will make it more difficult as far as the private sector is concerned. In the final analysis, through all of the amendments Mr. Gillies says he has that will remedy all the deficiencies, you may be achieving equity for the people in the public sector to the detriment of the people in the private sector. I do not think that is your intent. I think you come here representing all women in both the public and private sectors.

Ms. Gigantes: Talk about blackmail.

Mr. Callahan: I also read into the document--I cannot say that I blame you--an inherent distrust of government. That is perhaps a historical factor you have come to because this has never been successfully introduced before and the inequity exists as a result. In addition to that, it has to be recognized that you are representing women in the public and the private sectors and if you are to achieve justice, which this government would like to see you achieve, you may not achieve it for everybody if it is not done in a sensitive fashion.

In addition, I can understand your wish to overcome the three-year implementation. You obviously have a distrust of government and the accord will be up in a year and you want to get it all in before that. I cannot blame you for that because you have looked at what has happened in the past and you are not satisfied that any government would be fair.

Mr. Gillies: This is a question?

The Acting Chairman: I was just going to say, is there a question coming, Mr. Callahan, or maybe you could repeat that question?

Mr. Callahan: Maybe I could ask, to be straightforward--

Mr. Gillies: This is an after-dinner speech.

Mr. Callahan: --I think I read correctly that there is a concern about that. You do not believe that government will do what it is saying it is trying to do.

Ms. Ramkhalawansingh: I am not sure I agree. I fail to understand why you would say that if pay equity is implemented in the public sector, this would somehow be at the expense of the workers in the private sector. I do not understand that.

Mr. Callahan: At the moment, it is a question of breaching the gender gap, the inadequacies that have arisen because of the gender gap. You are asking that this be enlarged, which is understandable, but that is going to resound quite obviously into the private sector where the pot is perhaps not that significant and you are going to have the private sector perhaps resisting.

The Acting Chairman: Mr. Callahan, I wonder whether I could say to the committee generally that we are trying to question the people making presentations and if all of us engage in long statements, the question period disappears. I think it almost has now.

Mr. Polsinelli, do you have one question you would like to ask?

Ms. Ramkhalawansingh: May I respond to a couple of things here?

Mr. Callahan: Please.

Ms. Ramkhalawansingh: One of the issues that is raised all the time is who is pay equity going to affect. Our feeling is that women have for a long time paid the price of not having pay equity. If you are suggesting that this is going to continue because it is somehow going to affect the private sector, I find this very hard to believe, particularly when one looks at the tax structure of this country. Increasingly, I see individuals paying a greater share of that tax burden. I am making the comment about priorities, where money is spent, how the various income tax and other tax money is allocated and collected. I find it very hard to believe that equity will somehow bankrupt our economy.

There are issues that have to do far more with allocation of resources and how one establishes priorities. If one looks at the American experience with respect to employment equity and pay equity, there are many large corporations in the United States which will say they have more efficient work forces. They are able to hire and recruit women because they perform better,

and as a result of employment equity and pay equity demands, they are able to better rationalize their work force, notwithstanding all the other shifts to the right and so forth. It has not been to the detriment of the private sector. It really concerns me to hear you say this will occur.

Mr. Callahan: I did not suggest that, but I suggest the appearance. In any event, I am--

The Acting Chairman: Could we carry on with this debate? I would like to let Mr. Polsinelli pose a question.

Mr. Polsinelli: I assure you it will be a question, Mr. Chairman.

First, let me say it is a very thoughtful brief and I will enjoy reading the first half of it. I read the second half as you were going through it.

As I see it, this legislation is attempting to do one thing; that is, redress societal undervaluation of women's work through whatever means we have chosen to do that. As I see it, the gist of your brief is that what you would like to see is legislation dealing with employment equity; rather than see gender-based discrimination, you would like to go the full gamut and have legislation that would take care of employment equity. If that is your position, I sympathize with it, but I do not think that is what this legislation is trying to do. This legislation is addressing one narrow aspect of employment equity, which is that discrepancy in wage levels that is due to gender-based discrimination.

Ms. Ramkhalawansingh: You just said that the purpose of the legislation is to redress the historic and systemic undervaluation of women's work. I suggest this legislation does not address that. It does not address it because the legislation is very limited. With respect, your definition of groups, your method of comparing groups, your use of gender predominance, the use of representative job level, etc., for making those adjustments do not address the issue of the historic undervaluation of women's work. We would like you to do that in this legislation.

The employment equity issue is related to it. A major part of employment equity is pay equity, because women are not only interested in working but they are also interested in being paid for the work they do. The two things go hand in hand.

15:20

Mr. Polsinelli: Obviously your feeling is that it does not address the full systemic undervaluation of women's work.

Ms. Ramkhalawansingh: It tinkers with it.

Ms. Ion: May I suggest to you that when the women this is supposed to affect discover the few benefits and how many women are going to be left out, they are going to be very angry.

Mr. Polsinelli: Hold on. If we are talking about how well it addresses it and what percentage of the wage gap it is going to close, I respectfully submit that is a different issue.

The Acting Chairman: Will you keep to questions rather than engaging in a debate, Mr. Polsinelli?

Mr. Polsinelli: We can differ as to how well or how poorly it impacts on that, but I felt as I was listening to you reading your brief that systemic undervaluation of women's work was only one of the things you were concerned about and that you would like to see a much wider scope of legislation.

Ms. Ramkhalawansingh: A major part of the wage gap between men and women has to do with occupational segregation, as well as industrial segregation and a host of other things. A pay equity policy that deals only with representative job levels and gender predominance does not necessarily consider all these other factors that account for the wage gap.

Mr. Polsinelli: This policy does consider some of them and it addresses them in terms of \$88 million a year. It is going to have some beneficial impact on women employed by the public service.

Ms. Ramkhalawansingh: I hope you do not spend more money on your administration of it than on what actually goes into wages.

Mr. Polsinelli: So do I.

The Acting Chairman: Mr. Polsinelli, thank you very much. Ladies, we appreciate your coming before us and making this presentation, which we will consider very carefully.

The next and last presentation today is from the Ontario Chamber of Commerce. Welcome, gentlemen. Perhaps you will introduce yourselves and carry on with your presentation.

ONTARIO CHAMBER OF COMMERCE

Mr. Gray: Mr. Chairman and members of the committee, we have handed to the clerk a number of copies of our brief. We will have a chance during the next few moments to review some of the salient parts of it. I hasten to say we will not be reviewing all of it; we know you will have an opportunity in due course to read it in detail. We hope to review the salient parts and perhaps expand on one or two aspects of it.

Before I get to it, I should say one or two things by way of introduction. My name is Douglas Gray. I am chairman of the chamber's employer-employee relations committee. In that context, the committee of which I am a member has primary responsibility within the chamber of working on matters relating to labour and employee relations as they affect our members. With me is Wallace Kenny who is a member of the same committee.

I will mention in a moment the main points we would like to address today. By way of observation, I should say the basic position of the chamber to date is fairly well known as it relates to this subject. I know it is not the mandate of this committee to deal generally with the subject of whether pay equity or equal pay for work of equal value is a good idea, a bad idea or any other kind of an idea.

With that in mind, we will not restate our position, which, as you know, is in opposition to the concept, but we will try to focus on the particular provisions of this bill that we consider to have some difficulty with them.

We also recognize that this bill relates only to the public sector in the narrow sense. You will know, of course, that the chamber consists primarily of private sector organizations, and for that reason I suppose the bill will not have an immediate, direct impact on our members. However, our members recognize that any legislation of this kind is bound to have a very indirect impact on the private sector in due course, and that is why we are here.

The main points that we want to mention are the following:

First, our main concern is with the impact that we believe this bill will have on collective bargaining. In particular, this will come about because of the necessity to engage in cross-bargaining-unit comparisons between jobs.

The second main point is what we see as a failure to recognize the impact of market forces on compensation rates paid to employees of both sexes and the failure to address that difficulty in this bill.

The third main point I want to address is something that is not in the bill but that has been in the press in the last couple of days, and that is the proposed expansion of this bill to cover other public sector or perhaps quasi-public sector undertakings, such as hospitals, municipalities and other crown agencies.

Before I get to those main points, I should mention that you will see some other things addressed in the brief we have handed to you. We will be happy to answer questions on them. I will not say they are not as important as the main ones I have mentioned, but they are more of a detailed variety rather than difficulties in principle, as the main points we have mentioned are.

I heard one of the members of this committee state--and I think I wrote it down correctly--that the purpose of this bill is to redress societal underevaluation of women's work. In our respectful view, this bill, if it is enacted in its present form--and indeed, if it is enacted in its proposed amended form--will do far more than accomplish this objective.

The first thing it will do, in our view, is, if not destroy, at least radically alter collective bargaining as we know it. This bill, as we read it, attempts to segregate from the ordinary scope of collective bargaining under the Crown Employees Collective Bargaining Act a series of separate forms of bargaining that must take place, first with each bargaining agent with respect to each bargaining unit, then with all the bargaining agents together with respect to all the bargaining units and then from some other source a comprehensive scheme that will cover not only the bargaining units but all others.

In our view, it is impossible to segregate this second kind of collective bargaining from wage collective bargaining in general. In our opinion, it is simply an impractical and impossible thing to do.

Having gone that far, the implication seems to be that wage bargaining, assuming that this kind of wage bargaining can be segregated from all other kinds of wage bargaining, can then be separated from all other collective bargaining. Once again, in our view, this simply cannot be done. Anyone who is engaged in bargaining, both from the trade union side and from the management side, knows that collective bargaining is a package of proposals, both

monetary and nonmonetary that depend on each other. Any attempt to hive off one set of proposals and deal with them separately is doomed to failure. Any attempt to try to do it will have an immeasurable impact on the way the bargaining is conducted for other issues.

15:30

What is left? Once you try to separate this kind of collective bargaining, which it is, whatever label you put on it, what is there left of collective bargaining as we know it? We are not sure what impact there will be on collective bargaining in the public service as this bill is drafted. I will have more to say about it with respect to the impact it may have if the bill is extended beyond the public service. I simply say we do not know what impact there will be. We are very concerned that there may be a very negative impact on bargaining.

The second point I mentioned is the aspect of market forces. The bill defines value as an amalgamation of four factors. Nowhere in there do we see any mention of market factors. The fact is that the price of labour, like any other commodity, is fixed, at least in part, on the basis of supply and demand and what some person is willing to pay and another person is willing to accept for the price of a given commodity. Even though it might be considered useful to introduce other factors into determining the price of this particular commodity, as any other, we do not see any realistic way you can eliminate market factors altogether. We are worried, if this bill is enacted, at least for the public service of Ontario, that factor will be eliminated.

The practical reality is you cannot eliminate market factors unless you completely restructure the market as we know it. We do not see anything in this bill that says we should simply restructure the market as we know it, but we are afraid that may be the result.

The third main point, as I mentioned at the outset, is our concern about the possible expansion of this bill to cover other public sector undertakings. Let me just mention the way our concern develops in a couple of ways.

First, our understanding as to the theory behind the present bill was that it would be useful and it is easier perhaps in theory to try out this concept, recognizing that it is an untried concept, on an existing, well understood model. What do we have in the public sector narrowly defined in Ontario? We have a model that consists almost entirely of one bargaining unit that is represented by one trade union to cover well over 90 per cent of the employees who are employed by the Ontario government. That is a fairly simple model to start with.

In addition, we have a long established job evaluation system that already exists. It is administered by one agency, the Civil Service Commission, which is a fairly scientific and sophisticated model. I will not say it is simple, but compared to other models, it would be relatively simple perhaps to study the potential of pay equity or equal pay for work of equal value by implementing it with this model. Subject to the comments I have already made about our basic concerns with the bill, we can at least understand that this is more feasible than trying to implement it for society at large.

What about some of these other undertakings to which it is suggested we could apply this? How much do we know about the nature of those undertakings?

What do we know about the nature of any job evaluation schemes in those undertakings? What do we know, or do we know enough, about the nature of collective bargaining in those undertakings? Do we have any idea what impact there may be on collective bargaining in those undertakings?

Let us take hospitals as an example. How well known is it that there is no right to strike in hospitals? Wages are set in hospitals by compulsory arbitration. There is a voluntary system of centralized collective bargaining in hospitals. That is voluntary both for the unions and for the various hospitals. What impact would this kind of legislation have on that kind of bargaining? What impact would the change in the wage rate for one employee in one hospital have on the wage rates in all the other hospitals, which have either been voluntarily bargained or arbitrated, for that matter?

Let us take municipalities. There, many employees, if not most employees, have the right to strike, but not all of them have the right to strike. Firefighters do not have the right to strike. They are subject to arbitration. Municipal employees who work in old age homes do not have the right to strike. They are subject to arbitration. What impact is the change in one wage rate for one employee in a municipality going to have on all the other employees in the municipality, some of whom have the right to strike and some of whom do not? Obviously, not all of them bargain together. In fact, very few of them bargain together. It is not impossible for one municipality to have half a dozen bargaining units.

In our view, the potential difficulties we mentioned with collective bargaining in the public sector, as the bill is drafted, would be compounded beyond recognition if an attempt were made to extend the bill to all these other undertakings. Maybe after the existing bill has had a chance to work, some other kind of legislation could be extended to these other undertakings. We do not know that and will not know that until we have seen this bill have a chance to work, if it is enacted in either this form or some amended form. To try to do it now without adequate study and consideration, we think, would be very much premature.

Those are all our preliminary remarks. We would be happy to answer any questions members of the committee may have.

The Acting Chairman: Ms. Gigantes has some questions.

Ms. Gigantes: You have been pretty up front with us, Mr. Gray, about your opposition to the concept of equal pay.

Mr. Gray: We try to be, Ms. Gigantes. Yes.

Ms. Gigantes: What you have essentially told us is: "We do not like equal pay. Keep it roped in to a sector where it will affect 24,000 women."

Mr. Gray: I do not think that. I am being just as up front with you as you are kind enough to say. I do not think that is a fair way to put it, Ms. Gigantes. We simply intended to repeat what I believe is fairly well known anyway. We are opposed to the concept for reasons we have stated many times, both before this House and in other places.

15:40

Ms. Gigantes: Then is it reasonable for us to give credence to you when you say, "Let us see it work for 24,000 women and then maybe it will work better for everyone else."

Mr. Gray: I hope that you will take that observation--

Ms. Gigantes: You are still going to oppose it when we get to the broader public sector whether we do it now or whenever. Then you are going to oppose it when it gets to the private sector.

Mr. Gray: If you are asking whether we have changed our minds in the past two weeks about our views generally on equal pay for work of equal value, I am being candid in saying, no, we have not.

Mr. Kenny: That does not mean we do not have some concrete things to say about now this bill will impact the public sector. We have attempted in our submission to you to address some of the major concerns we see with the practicalities of the bill. That is what we are trying to deal with today.

Ms. Gigantes: Are most of your members engaged in collective bargaining?

Mr. Gray: It is hard to say. It is interesting you asked that question because in a sense the chamber has within its membership the broadest possible kind of membership. We do not purport to speak for large business or small business or any kind of business in between. We have small organizations, medium organizations and some large ones. A great many of them are engaged in collective bargaining. If you ask me whether we have done a survey to see how many, the answer is that we have not.

Ms. Gigantes: Are many of them in a situation where they have been involved in collective bargaining with more than one bargaining unit?

Mr. Gray: Yes, a great many of them.

Mr. Kenny: In the larger public sector issue that your party and the Conservative party are supporting as an amendment to the bill, a hospital, for example, could have as many as 10 bargaining units.

Ms. Gigantes: Yes, I used to work at the CBC.

Mr. Kenny: Then you have some awareness of that. That is a significant concern with respect to the way this bill is fashioned. The way the system of collective bargaining has worked until now is that each bargaining unit could determine what priorities it wanted to set out on the bargaining table. If somebody wanted more seniority protection, the bargaining unit could bargain for that. If somebody wanted more money, it could bargain for that.

What this bill does is say, "No, you cannot choose what you wish to bargain for." To be fair, it does not do that. It says you can continue to choose what you want to bargain for, but in addition to that, all the jobs that are evaluated equally have to be paid the same. A bargaining agent can come to the table and bargain for certain provisions and wait for another bargaining agent to come to the table and bargain for different provisions and then say, "You have given these people, on their set of priorities, greater benefits than these people who have been evaluated equally, so we can now jump on the coattails of that bargaining as well."

You risk an escalation of wages as a result of this and you interfere and make it difficult for an employer to bargain with one bargaining agent at a time and accept those priorities that they wish to bargain.

Ms. Gigantes: Did you have the same kind of concern during the period of wage restraints when you had a similar additional factor thrown in to the collective bargaining process, which was that you had a maximum amount that groups were going to be given?

Mr. Gray: Are you asking whether we had concerns during the wage restraint period? Sure. Employers had concerns during the wage restraint period just as much as unions did.

The fact is that free collective bargaining was interfered with, but it was recognized at the time that it was a temporary interference. There was never any intention to gut the whole system for any length of time. Any time we have had that interference, it has had a defined termination date on the end of it. There was also a recognition during that time of what impact the interference with wage negotiations could have on other terms and conditions. There is no doubt about that.

Ms. Gigantes: One assumes that if one is going to have an adjustment that is outside the normal collective bargaining process, the adjustment, for whatever term we give it legislatively, will have a finite conclusion.

Mr. Gray: Perhaps I have missed it, but I do not read anything in the bill that says it is to be repealed on any particular date. That is our difficulty.

Ms. Gigantes: As Bill 105 is laid out, one assumes that the largest part of whatever adjustment will be made in pursuit of these pay equity plans will be complete by year 4.

Mr. Gray: If we saw in the bill something that said it was to be repealed on a particular date, we would feel much differently about it.

Ms. Gigantes: Repealed in a sense; not that we are going back to the old wage levels. Indeed, one did not go back after wage restraints either. No automatic catch-up was provided for employees after wage restraints.

Mr. Kenny: The difficulty in what you are saying is that section 26 of the act indicates, as you would expect, that if you are going to adjust wages and put things on an equitable plane, you cannot negotiate them away at a later date.

Ms. Gigantes: Right.

Mr. Kenny: Once you have cross-unit comparisons, as the bill suggests, you have wage levels in one unit balanced with wage levels in another unit.

Ms. Gigantes: That happened with wage restraint too.

Mr. Kenny: Right; but it was a temporary situation.

Ms. Gigantes: However, wages were not readjusted after wage restraint. It continued in time, if you see what I am getting at. We are looking at two sides of the same discussion, except in one case we had a

cutback of payments to employees, and in this case we are proposing an increase in payments to certain employees; both would obviously continue in time.

Mr. Kenny: In the set of negotiations after our wage constraints came in, bargaining units were free to negotiate again on their own set of priorities. Because priorities differ among bargaining units, you saw a natural shift in priorities and changes in collective bargaining. There was a percentage increase freeze; that was it for a specific period.

If I can give you a practical scenario that might help, one bargaining unit may want a three-year collective agreement, while another may want a two-year collective agreement. There may be a one-year difference between wages; hence, wages will be adjusted for three years for one group and two years for another group. Under this bill, section 26 could come into play to require the employer to raise the level of wages of the group that has not yet had them negotiated, since it has only a two-year collective agreement, based on what the other group is receiving because it chose a three-year collective agreement.

After you have brought everything into line, you are constantly going to have the bargaining units fighting among themselves to see who will do the lead bargaining and how the bargaining will commence. Every collective agreement will be tied to every other one.

Ms. Gigantes: How was it handled during the period of wage restraints?

Mr. Gray: They all got the same increase, as I recall.

Ms. Gigantes: If they were in a two-year contract compared with a three-year contract, how was it handled?

Mr. Gray: As I recall, in that circumstance, they all had to have agreements that expired on the same date, or they were legislatively deemed to expire on the same date, with increases that were deemed to come into effect on a particular date and deemed to be a particular amount. I do not recall anyone suggesting that we should have a permanent system of collective bargaining based on that kind of interference.

15:50

Ms. Gigantes: We know from the general level of wage increases that have been negotiated across the province since the wage restraint period that there has been a consistent pattern of low wage settlements. I would like you to tell me which groups got 10 per cent, compared with another group that got three per cent.

Mr. Gray: I might help you in this way. My last recollection of the figures I saw suggested that in the public sector the wage increases were somewhere in the order of 4.5 per cent to five per cent a year, whereas in the private sector they were anywhere from zero to three per cent. Whether that helps you or not, I do not know.

Mr. Kenny: If those are average figures we are dealing with, we are aware of companies settling for 10 per cent and two per cent.

Mr. Charlton: The public sector went through two rounds of wage restraint, where the private sector went through only one.

Mr. Gray: But in fairness--once again, my memory may be quite bad on this--my recollection is that during that period of wage restraint, the public sector came out with increases that were slightly higher than the increases that came out for the private sector. Once again they were somewhere between--

Ms. Gigantes: That is because the private sector is not very highly unionized.

Mr. Gray: They were somewhere between four per cent and five per cent in the public sector and quite a bit lower than that in the private sector. In the private sector--and I am talking about unionized rates, to deal with Ms. Gigantes's point I heard her just make; I am talking about negotiated rates with unionized employers--they were anywhere between zero and three per cent. Most of them were in the three per cent range, but wage freezes were not that unusual.

Ms. Gigantes: That is correct.

Mr. Gray: I do not recall any wage freezes in the public sector. I recall designated percentage increases, but I do not recall any wage freezes. I may be wrong in that, but if there were any I would be--

Mr. Charlton: In the public sector restraint program there were no designated wage increases; there were caps.

Mr. Gray: There were designated maximums; that is correct.

Mr. Charlton: But that does not mean everybody got that maximum.

Mr. Gray: I do not recall that very many got zero, but certainly some in the private sector got zero.

In any event, our main point is that whole thrust was a temporary intervention, and once it was finished it was gone. But I do not recall anyone suggesting, at least directly, that we should now have a permanent, radical intervention.

Ms. Gigantes: Mr. Gray, it is not gone in the sense that--for example, during a period when there were fixed caps on wage increases in the public and in the private areas, women, who we contend have been undervalued in terms of their pay for the work delivered, saw their wage levels as a percentage of men's wage levels falling further behind. So there has been nothing finished about that process. It continues today and it continues 20 years down the road. You understand there have been permutations and combinations--what was it?

Mr. Kenny: You have got it.

Ms. Gigantes: It just keeps on going. It is built in and you understand that very well. It is built into the system. What we are asking is to have something else built into the system. It will continue--sure it will--but it will mean in the end that women will be able to retire perhaps without starving, which might be nice, if society started placing some value on that kind of development.

Let me turn to one other item. On page 4 you mention that a system that is used to evaluate a clerk might be inappropriate in evaluating a manager. I do not understand the point of that statement. On page 8 you draw another

analogy, that while job A and job B may be equivalent to one employer, the worth of job A may be substantially different from another. That seems to me to miss the point of the employer--

Mr. Gray: Maybe I can deal with the point on page 8 first. I think that picks up on the view I expressed in the introduction, that we see market forces as going beyond simply a comparison between job A and job B within an organization.

Ms. Gigantes: But we are not going to compare job A and job B across employers, are we?

Mr. Gray: Exactly.

Mr. Kenny: But the employer is going to have to when he buys the service. That is the key. When the government buyer goes out in the marketplace to buy the service, he is competing with the employer who has rated job B differently. A secretary may be very important to one employer; the other employer may have a computer terminal and hence value his secretary a lot less in his kind of company.

Wage rates, we suggest, are dictated not only by what employer A judges a secretary to be worth but also by what employer B judges a secretary to be worth; it is a combination of those values that dictates the wage rate. The system here would require an employer to pay simply on the basis of the internal comparison with his other jobs and to ignore the fact that the employer in the marketplace has a different value for that job and may wish to pay a different amount so he is not on the same competitive basis as the employer in the marketplace.

Ms. Gigantes: It must be a different kind of job.

Mr. Gray: There may be a philosophical difference there. For what it is worth, it is our philosophical view that the marketplace is a province-wide market for--

Ms. Gigantes: You are afraid that if the government wages for women's work rise, you are going to end up paying a higher price for women, whether or not there is equal pay legislation covering the private sector.

Mr. Gray: I would not put it that way. The way I would put it is that the marketplace is a very difficult thing to put a fence around, and we see any legislation of this kind as an attempt to put a fence around it.

May I deal with the points you have made about page 4? We see that there are difficulties if you require the imposition of one job evaluation scheme. In effect, we see this bill as a requirement to impose either one job evaluation scheme or at least a scheme that is adaptable to become one. As soon as you permit job comparisons across bargaining units, you are going to have to have some method of preparing them. You have to do so by definition; otherwise, you cannot make the comparison.

The fact is that there are a great many different evaluation schemes that value different jobs in different ways, and that is because of the different functions they perform. It would not be--

Ms. Gigantes: But it would be up to the employer in an organized situation, with the assistance of employees, to come up with one that was suitable to that employment place.

Mr. Gray: But that is the difficulty we see. We do not think, as a practical matter, it is feasible to do that. You may have a job evaluation scheme that is designed to evaluate, let us say, management jobs; if you try to apply it to clerical jobs, you may find that the clerical jobs are valued lower than they are paid. That is simply because of the way the factors and the ratings applied to those factors are devised. Therefore, if you insist that the employer apply the management job evaluation scheme to everybody, you may find some jobs going down. You may be surprised.

Ms. Gigantes: You might be delighted.

Mr. Gray: I might be even more surprised.

Ms. Gigantes: I think you will be.

Mr. Gray: The point is, though, that we think it is quite legitimate, if you have a job evaluation scheme at all--and many organizations, if not most of them, do not have one or any of them--but we do not see that you need to have only one. There are quite legitimate reasons for having different ones.

Ms. Gigantes: Do you run a business, Mr. Gray?

Mr. Gray: I happen to be in the legal business. Yes.

Ms. Gigantes: Do you know any people practising a business who do not do some kind of at least semi-conscious job evaluation?

Mr. Gray: Let us put it this way: I know a great many people in business who have no job evaluation scheme. They advertise in the newspaper for work as they need it. They scout around to see what people are paying. They hire people who apply and who either are willing to work for what is offered or are not. It would be my guess that there are even people in this room who operate businesses on that basis, but once again I may be wrong in that.

Ms. Gigantes: Do you think it is a good way to run a business?

Mr. Gray: A lot of people have run it that way for a long time and they seem to stay in business. Whether it is good, I am not able to say. It seems to work.

Mr. Kenny: There are an awful lot of small businesses in this province that do not have any personnel department or anybody making any determinations on the basis of some kind of structured evaluation scheme.

16:00

Ms. Gigantes: Let me tell you a little story, if I may indulge just for a second.

The Acting Chairman (Mr. Gillies): Just before you continue, Ms. Gigantes, I am quite happy to let you continue because there are no other speakers on the list right now.

Ms. Gigantes: I will take 25 seconds.

The Acting Chairman: Should I check if any other members wish to participate? Otherwise, feel free.

Ms. Gigantes: I met a businesswoman on a plane about six months ago. She had taken over her father's company. She had assisted him in running the company. It is a large farm machinery company based in the west for the past decade. She is a woman of perhaps my age.

She said when he decided to retire, her father hired a personnel firm to do a proper selection of who should take over. Much to his amazement, they suggested his daughter. She was very reluctant, because her father had other people in mind: men. She took it over only when her father said that was what he really wanted. He thought perhaps the outside consultants had been right. In fact, she has run it successfully for several years and is an acknowledged business leader in her own right.

It is so easy to assume the secretary who keeps the office running, or the production manager who is a woman, is doing work that is not very highly valued.

Mr. Gray: I assure you we make no such assumption.

Ms. Gigantes: Perhaps it would increase the productivity of Canadian business if we asked businessmen to look at this very closely.

Mr. Gray: As I indicated, we make no such assumption. The chamber has always supported the concept of equal opportunity and will continue to do so. We are afraid, though, that this kind of legislation, instead of accomplishing what once again I heard one of the committee members say what was the purpose, which was to redress societal undervaluation of women's work--

Ms. Gigantes: Systemic undervaluation.

Mr. Gray: I stand corrected if that is what he said. In any event, we are afraid the legislation will have ramifications that go far beyond that objective. We hope to discuss some of them with you today.

Mr. Kenny: We believe you can avoid some of the problems with the collective bargaining process if you simply maintain the evaluation systems within the first parts of the act and do not extend to parts V and VI, so you have one entire system for an employer. In the civil service, where you have only one bargaining unit, it may not be of that much significance. It is of great significance once you get into these situations where we have 10 or so.

I know it is four o'clock. There is just one other thing in the bill we might mention which puzzles us somewhat; it is the proposed amendment to clause 5(2)(a), which I believe was section 7 in the original bill. It is just something we mention, but it appears from the way we read the bill that once--

Mr. Callahan: Excuse me. On whose amendment are you speaking?

Mr. Kenny: We believe they are Liberal amendments.

The Acting Chairman: The only amendments public at this point are the government's amendments.

Mr. Kenny: They moved that section from section 7--it was subsection 7(d)--into clause 5(2)(a) as the proposal. It would appear, if we read it correctly, once the representative job level in a female-dominant group is calculated to be undervalued in relation to the male-dominant group, all the jobs in the female-dominant group are also automatically deemed to be

undervalued and all of them get the same percentage increase as the representative job level gets.

It may be administratively easier to do it that way, but we are not so sure you may not be creating more inequities by doing that. If you are going to have an evaluation system that applies to all jobs, we would respectfully suggest you apply it to all jobs and determine whether each job is improperly paid. One job in a group of jobs does not mean the rest have the same inequities. We just point that out.

Ms. Gigantes: Thank you.

Mr. Gray: Any further questions, Mr. Chairman, or members of the committee?

The Acting-Chairman: That is what I was going to ask. Any further questions?

Mr. Poirier: Just for the record, does the Ontario Chamber of Commerce recognize that there is or there may be some gender-based discrimination on pay scale?

Mr. Gray: Let us put it this way, Mr. Poirier: We have read the statistics that appear in that green paper and we have no particular reason to quarrel with the statistics there. However, we would observe that, even there, what is identified as a gender-based problem can be traced in any discriminatory way to only a rather small percentage of the total wage gap, as it is called. With respect to the vast majority of that wage gap, it would seem to us the factors identified there are either legitimate or they are being closed by virtue of the market factors that we think operate, generally speaking. I hope that answers your question.

Mr. Poirier: Would you think the so-called market factors would help alleviate that gender-based difference by themselves?

Mr. Gray: Yes. We do not think there is any question about that. We think that over the past few years a greater awareness of the problem has produced immeasurable gains, and we think there will be a lot more immeasurable gains as time goes on.

Mr. Poirier: In other words, you are saying that time would self-remedy the situation.

Mr. Kenny: It is not time in and of itself. Some education is also required to remedy the situation. We are not suggesting time will solve all.

Ms. Gigantes: Did you say "measurable" or "immeasurable" gains?

Mr. Gray: I think I said both, but I am not sure; I would have to go back.

Ms. Gigantes: The facts do not bear that out. The increasing level of education of women in the work force has not produced the closing of the wage gap, and it is a matter of record that women with higher levels of education, and indeed experience, in some cases do not get paid at the same level as men.

Mr. Gray: Sure. You and I could debate for a long time whether the

problem is due to more highly educated women coming into the work force later or whether there is some other difficulty. I am not sure we can solve that debate in five minutes.

Ms. Gigantes: We think we know the problem--

Mr. Chairman: Order please. Mr. Poirier has the floor.

Mr. Poirier: Thank you, Mr. Chairman. I agree. I just wanted to get the opinion of the Ontario Chamber of Commerce for the record; where you stood pertaining to available statistics and what your perception was as the source of that difference. You said you do agree that you might claim the actual numbers based on that might be smaller than the statistics, and that the Ontario Chamber of Commerce could feel it could resolve that problem with time and with education. That is your position.

Mr. Gray: I am not even sure they are smaller than the statistics. If you look at the stats used in the green paper, the portion of the wage gap that is attributed to discriminatory factors is quite small, as I recall it. Other factors would seem to be much larger in terms of how the gap is made up. Our view is that all those factors are being addressed right now and will continue to be.

16:10

Mr. Callahan: Do you mean through the market process?

Mr. Gray: Yes.

Mr. Callahan: I think if you had been here this morning to hear a lady who has been a seamstress in a public service job, you would have grave doubts about that. This lady is a professional in her own capacity and she continues to make what can only be described as very minimal wages. As far as I am concerned, without legislation such as this, that woman would fall right through the cracks. She would never get out of that box.

Mr. Gray: I am sure that out of the several million people in this province, we could come up with examples to prove any point. You and I could debate for quite a while about whether quite a few men are underpaid too. Whether that is attributable to discrimination or some other reason that ought to be addressed by legislation is another matter. That point was made in the green paper too.

The Acting-Chairman: Thank you. Mr. Callahan.

Mr. Callahan: I forget what I had to say.

Mr. Polsinelli: Perhaps I have one question, since we have exhausted the other members of the committee and it is such an exciting conversation. Mr. Gray, you will recall that about 17 or 18 years ago legislation came into effect requiring that employees be paid equal wages for equal work.

Mr. Gray: I recall it well.

Mr. Polsinelli: That was before my time, but from reading some of the transcripts of the day, I recall the employment community ranted and raved about how this was unjustly interfering with the market process. Do you think there may be a bit of an analogy with that type of legislation, which we all now take for granted as being appropriate and fair?

Mr. Gray: Frankly, I can see no comparison between the kind of intervention in the system of collective bargaining as we know it and what is being proposed in legislation of this kind. If you ask me whether there is any real comparison in practical terms, I simply repeat what I have said already; I see none, or very little.

Mr. Polsinelli: You are relating it to collective bargaining, but my question was relating it to the legislation that required equal pay for equal work and the comments from the employment community at that time.

Mr. Gray: I cannot speak for what employers thought about it in 1951. All I can say is that I really do not see the same comparison between that kind of legislation and what we have in front of us.

The Acting Chairman: If there are no further questions, we thank you, Mr. Gray and Mr. Kenny, for your submission and for sharing and exchanging these views with us.

Mr. Gray: Thank you.

The Acting Chairman: Members of the committee, I understand the next sitting will be Tuesday next at 10 a.m. We will have two submissions in the morning and three in the afternoon, so we will have a fairly full day.

Ms. Gigantes: Could the clerk check with some ministry person to find out when the answers to the questions we raised after the minister's statement will be available to us? It would help us in our discussion of submissions to have some of that information before us.

The Acting Chairman: That is an excellent suggestion. Perhaps the ministry representatives can check for us when that might be forthcoming.

Mr. Charlton: While we are on that, at least one of the government members in his questioning of the presenters today has been repeatedly focusing on this issue of extension and the possibility that an extension will screw up the whole process.

I do not quite understand this. Perhaps we can get some clarification from either the government members or from the ministry itself, but my understanding of the commitment is that we will see legislation for the rest of the public sector and the private sector this fall. I presume the kind of timetable this sets out for us will be to have second reading debate this fall, committee hearings over the winter break and passage of that legislation in the spring; so we are talking about a gap between this bill and the other bill of somewhere between three and six months at the outside.

Mr. Callahan: If it does not become a Bill 94 debate.

Mr. Charlton: Otherwise, we are talking about a government that intends to introduce this fall a piece of legislation which it does not intend to pass. This seems to be what is being reflected by the paranoia that seems to be prevalent on the other side in terms of whether we do two pieces of legislation or whether we do it all in one. I would like some answers, because this will bear very clearly on the relevance of the concerns by presenters that the bill is dealing with such a narrow field.

Mr. Polsinelli: I think Mr. Charlton is aware we have a clear indication and a commitment from the Attorney General (Mr. Scott) that

legislation dealing with the broader public sector and the private sector will be tabled this fall. I believe I have reiterated that commitment on a number of occasions today. If Mr. Charlton is interested in obtaining further specifics, perhaps--

Mr. Charlton: We also have statements from the Attorney General and a number of government ministers that this bill will form the model for the other.

Mr. Polsinelli: May I suggest, in terms of that legislation, that if you are interested in obtaining further specifics, it is appropriate for you to send a note to the Attorney General to ask whether he will be able to provide further specifics on that subject. I repeat that legislation leading with the broader public sector and the private sector will be tabled this fall.

Ms. Gigantes: The minister responsible for women's issue should be addressing it.

Mr. Polsinelli: With co-operation from the opposition parties, I am sure that legislation will move through.

Mr. Charlton: That still does not answer my question. Why the threats to possibly withdraw this bill when the other legislation is supposedly only three months behind this? Why do the threats about withdrawal even exist?

Mr. Polsinelli: I think you are misreading the comments that have been made. There have been no threats made with respect to withdrawing this bill. You, who are as familiar with the legislative process as I am, know the options that are available to government if a piece of legislation is sent to committee and does not come back substantially the same way it went in. There are no threats but merely an explanation of the legislative process, of which you are much more aware than I am.

The Acting Chairman: Order. I will try to be frightfully statesmanlike up here in the chair. I think we all understand the process. We have been through these committees how many times? There will be amendments put, I venture, by all three parties. Some of them will pass and some of them will not, and we will have at the end of this process a bill which will go back to the House. The government will then decide what to do, I am sure, with all considerations on it.

Mr. Charlton: I have one other minor question. I have listened very carefully to you and to Mr. Callahan today, and it amazes me how much Mr. Callahan sounds today like Mr. Grossman used to sound and how much you sound today like Mr. Wrye used to sound. Can you tell me whether, when the government changed in June 1985, you guys did a straight swap of files?

Mr. Polsinelli: That is unfair.

The Acting Chairman: In response to your question, it was not a direct exchange of files.

Mr. Callahan: I am speechless.

The Acting Chairman: The committee stands adjourned until 10 o'clock Tuesday morning.

The committee adjourned at 4:18 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PUBLIC SERVICE PAY EQUITY ACT
TUESDAY, SEPTEMBER 30, 1986
Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant

Deputy Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Labour Policy and Programs

From the Communist Party of Canada (Ontario):

Laurier, C., Women's Committee

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, September 30, 1986

The committee met at 10:09 a.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting Chairman (Mr. Partington): Ladies and gentlemen, I would like to call the hearing to order so we can start. I can confirm at the opening that this is the hearing of the standing committee on administration of justice to receive submissions with respect to Bill 105.

Our first presenter this morning is the Communist Party of Canada (Ontario). Perhaps you would identify yourselves. There is an hour set aside for you to make your presentation and to give the committee members an opportunity to ask some questions about your brief.

COMMUNIST PARTY OF CANADA (ONTARIO)

Ms. Laurier: My name is Cathy Laurier. I am from the women's committee of the Communist Party of Canada (Ontario). On my left is John MacLennan, who is the Ontario organizer for the party, and to my right is Kerry McCuaig, who is the researcher for the party. All of us will be available to answer questions.

Ms. C. E. Hart: Excuse me, Mr. Chairman. Whether this is a point of order, I am not exactly sure. What I would like to request is that the committee be designated a nonsmoking committee. I find it very difficult in this room where the ventilation is less than perfect.

The Acting Chairman: Are you making that in the form of a motion?

Ms. C. E. Hart: I am happy to make it in the form of a motion.

The Acting Chairman: Ms. Hart moves that this committee be designated a nonsmoking committee. Is there a seconder for the motion?

Ms. Fish: I will second the motion. I have an allergy to tobacco products and would very much welcome the opportunity of being able to sit through a committee without having to leave regularly to be able to breathe.

The Acting Chairman: Is there anyone who is opposed to the suggestion of not smoking during these sittings?

Mr. Knight: We will probably hear from some of the other members who are not here, who, I suspect, are smokers, but I think it is probably in order to make the decision in their absence so they will not have to mull over it too much.

The Acting Chairman: Exactly. I am glad to have that occur right now. I want to make it a democratic decision. Is anyone opposed to the motion to eliminate smoking during the sittings?

Mr. Gillies: I support the motion. Just do not tell the tobacco farmers in my riding.

Motion agreed to.

Ms. C. E. Hart: Thank you, Mr. Chairman.

The Acting Chairman: Fine. We will have clearer heads for your presentation.

Ms. Laurier: The Communist Party of Canada (Ontario) welcomes the opportunity to appear before this committee to offer its views on Bill 105, the Public Service Pay Equity Act. We must note, however, that Bill 105 falls far short of the stated commitment by this government to provide equal pay for work of equal value in both the public and private sectors.

After the extensive discussions, debates and depositions surrounding the green paper on pay equity, it was our hope that we would at least be able to state that Bill 105 was a good beginning towards achieving the government's stated goal. Unfortunately, this is not the case. Bill 105, given its best interpretation, is a disappointment; given its worst, it is a cynical and insulting response to the efforts of the women's movements and labour movements and our party to win economic justice for the women of this province.

The entire thrust of this bill is dangerous. It has usurped and distorted a noble and realizable goal that has unified men and women workers. It now threatens to sow dissension amongst organized labour, between labour and the women's movement and between men and women on the job. In addition, the language in the bill can, and in all likelihood will, be used to override the collective bargaining process, which has been the most effective means to date in closing the gap between men's and women's wages.

It stretches the imagination to find any similarity between equal pay for work of equal value and what is contained in this bill. The International Labour Organization's equal remuneration Conventions 90 and 100, which Canada endorsed, called for the "application to all workers of the principle of equal remuneration for men and women workers for work of equal value" and for this principle to be applied to all benefits, including education and training. It called on governments to investigate compliance or lack of it and to educate the public on the importance of equal pay.

This is a very radical demand. It involves a redistribution of wealth away from the ruling class and to working people. It is a justice that begins to return to working women the billions of dollars in wages that have been stolen from them through discrimination.

On the other hand, Bill 105 is a veiled "share the poverty" scheme, offering minor wage adjustments for some Ontario civil service workers at the least possible cost. Rather than applying to all workers, as the act's name implies, it is to cover only those employees in "predominantly female groups of jobs in the public service."

Despite its call for gender neutral job evaluation systems, the act, because it allows no challenge to existing job classification and description methods, will entrench a highly gender-biased structure on the workers concerned.

Most telling, however, is the cumbersome implementation methodology of the act, which excludes vast numbers of the limited number of workers it defines and can leave those workers who do qualify waiting years to see their wages adjusted.

Bill 105 must really be called bad-faith bargaining on the part of the government. Its fundamental principles are so flawed it is not even a beginning point for discussion. To contemplate extending its provisions into the broader public sector will only exacerbate the many short-range and long-range problems it will cause.

Our party recommends the following:

(a) Bill 105 should be withdrawn and the government should act with due haste to bring forward new legislation in keeping with International Labour Organization Conventions 90 and 100 to cover all workers in both the public and private sectors.

(b) This should be a single act providing both a complaint-based and proactive approach to the implementation of equal pay for work of equal value and without time limits.

(c) The act must contain a strong statement of purpose recognizing existing discrimination against women and outlining the fundamental importance of equal pay as a basic right for women in Ontario.

(d) Effective legislation would demand both a substantial increase in wages for women in the private sector and increased corporate taxation to allow government to meet the wage needs of public sector workers.

(e) Equal pay is not an economic cure-all but must be accompanied by other support systems to lessen women's vulnerable position in the work place, including child care, substantial increases to the minimum wage, affirmative action and job training programs and laws both to strengthen the power of the trade union movement and to facilitate the organizing of the unorganized. To show its good faith in helping to achieve equality, the government should outline a plan of action on these matters also.

As stated, because of the flawed premise of Bill 105, it is not our intention to recommend amendments. We will, however, offer a more detailed critique of the bill to underline some of the more glaring pitfalls it contains.

The methodology and language of Bill 105 are almost totally incomprehensible. For an act which deals with such a small number of workers, almost all of whom are represented by a single union, it is difficult to understand why such a convoluted phasing-in process is required.

The part III to part VI phasing-in period will take months, if not years, to bring in any pay adjustments. Workers in the unionized civil service will be subjected to at least two, if not three, job evaluation processes. Such continual and close scrutiny of a worker's job is sure to cause tensions and certainly resentment from male workers.

Another problem is that no evaluation scheme is entirely gender neutral. Existing evaluation methods discriminate heavily against work dominated by women and by workers in general. It is difficult for class and sexual stereotyping not to creep into the job evaluation process itself, with work traditionally done by women and nonmanagerial jobs being consistently scored lower, even when their value may be greater.

The evaluation method also starts from existing pay rates which have been established by the job market. The bill accepts this premise and allows no mechanism for challenging existing job classifications and descriptions. Under these conditions, revolutionary wage settlements can hardly be expected.

Most damaging, however, is that it imposes on the public sector union a single evaluation scheme which can override collective bargaining patterns, thereby holding down wages for all government workers. The union, which to date has used one or more of its bargaining units to spearhead wage and benefit increases, could be stymied by a blanket evaluation of the entire work force.

Section 10 gives the commission the final say over collective bargaining. When and if the provisions of Bill 105 are extended into the broader public sector, will this prevent unions from negotiating for equal pay? Will unions be prevented from striking to win equal pay for their women workers?

10:20

Job evaluation schemes are not synonymous with equal pay. Equal pay is not solely about job content; it is equally concerned about addressing the wage gap. The wage gap is dealt with by getting larger pay cheques into the hands of women workers.

A proactive mechanism answers the question. Extra money should be allotted to the public wage bill to raise immediately the incomes of women at the lower end of the wage scale, at least equal to the lowest end of the male wage scale. This extra funding should be administered through the normal collective bargaining procedure. This would eliminate undue time lags or administrative costs since current data already exist documenting the wage gap. Redress to bring about pay equity for other wage sectors should be answered through a complaints procedure.

The bill also seems purposefully unclear about terminology. Groups of jobs, job rate, job level, representative job level, predominantly female and predominantly male groups of jobs, negotiations and pay equity plans are unclear and rife with pitfalls. In fact, the whole tone and implementation procedure could give cause to conclude that the government is less than anxious to move on the limited reforms it has begun.

We recommend the following:

1. A bill ensuring equal pay for work of equal value should be drafted in readily understandable and clear language so that the meaning and operation of the act is apparent to all concerned.
2. The bill would require that it be posted permanently in a readily accessible location in the work place.
3. The bill would cover all workers at the same time.

4. The bill would be proactive, involving both government and business specifically providing a fund to ensure that equal pay for work of equal value is achieved within a defined time period.

5. The bill would have a complaints mechanism which would allow individuals, groups or third parties to initiate action to achieve equal pay.

Bill 105 is based on gender predominance. Such guidelines are an invitation to abuse. Employers may manipulate their employee pools to avoid eligibility. Hiring and firing will become dependent on the percentage composition of any particular job classification. Affirmative action gains would be undermined as sexual ghettoization becomes entrenched.

What is magical about the 60 per cent predominantly female and the 70 per cent predominantly male figures? Is the legislation trying to claim that wage discrimination applies only at or above these ratios? Are women workers to be deprived of their right to higher wages based not only on wage discrimination but on the percentage of women in a job category?

Although the government can, through its own largess, designate new groups under the act, this can hardly be construed as guaranteed access to its provisions. If, as this provision indicates, the government sees the need for flexibility, then it should exercise this by removing all references to gender predominance from the bill.

This question was vigorously discussed and unanimously opposed in the many labour and women's movement briefs presented during the green paper hearings. Why does it now appear in the draft legislation?

The bill also excludes large numbers of workers by allowing comparisons only between groups of jobs. Individual comparisons are excluded. Even comparisons between groups are restricted to the representative job level in the category. As the representative level will be comprised of the largest number of employees, this group will likely be the lowest paid level in a classification and the one least able to demonstrate a strong pay equity case. Basing resulting wage adjustments on the lowest wage in the category will leave all other workers in the category with a pale imitation of equal pay. As an added insult, the female group's wages are raised only to the job rate for the job level in the predominantly male group with the lowest job rate.

Section 8 of the bill allows for wide exclusions from a group when determining female predominance. These exclusions refer to the type of employee and not the value of the work they perform and therefore have no place anywhere in an act dealing with equal pay.

Bill 105 also allows no input from unorganized workers to work out pay equity plans. The lack of input from unorganized workers has long-range implications if Bill 105 is to stand as a model for the extension of pay equity to the private sector where the majority of unorganized workers are found.

There are also no provisions in the act to prevent an employer from taking reprisals against an employee involved in a pay equity action. There is also no mechanism which requires the employer to release information about job content, wage schedules or other information necessary in developing a pay equity plan.

While the bill necessitates that a pay equity plan be filed with the commission, it does not require an employer to share the details of the plan with the workers affected.

The government as the employer of civil service workers is open to broad charges of conflict of interest in the administration and enforcement of the bill. The bill provides for a very hands-on role for the minister. He is responsible for the appointment of arbitrators under parts III and V and it is to him that the Pay Equity Commission directly reports. This is a process open to abuse. The minister as a member of government is the employer and not a neutral party. Arbitrator appointments could easily become patronage deals.

The role and powers of the Pay Equity Commission are also encumbered with difficulties. It appears the commission will have limited funding, judging from the requirement that it use the employer's, i.e. the government's, services and facilities. It must seek Management Board approval before securing expert staff. Also, it has no powers to initiate pay equity actions on its own. This all serves to undermine the credibility of the commission, which can be viewed as an extension of the employer.

The commission also finds itself in conflict under the provisions of the bill. It is charged with reviewing all pay equity plans to ensure they are in keeping with the act. It also has the power to impose plans. At the same time, it can inquire into, investigate and determine complaints. How is the commission supposed to be neutral in ruling on provisions which it has already reviewed and approved?

To ensure greater safeguards, we recommend the following:

(a) An independent pay equity commission, including representatives appointed by the organized labour and women's movements would administer the act and be required to report to the Legislature annually.

(b) The commission would be sufficiently funded and staffed and have the power to take action against employers who fail to comply with the act. The commission would also be empowered to launch its own pay equity complaints and to survey and monitor establishments to note progress being made and to enforce compliance.

(c) A pay equity tribunal, appointed by the commission with representation proposed by the labour and women's movement, would hear all appeals.

The provision for complaints set out in part VIII is particularly restrictive. Complaints made later than 90 days after a pay equity plan has been filed are prohibited. It must also be ensured that complaints made during the process cannot be used as an excuse for simply delaying the whole process of implementation.

These are just some of the more glaring problems with Bill 105. We reiterate that, in total, it is not only inadequate but it also holds the potential for actually holding down women's wages. It is not a small step forward but a large step backwards.

Mr. Chairman: Thank you. Ms. Gigantes, do you have a question?

Ms. Gigantes: Yes. Thank you for your brief. On page 1, you make reference to the language that will override the collective bargaining

process. I assume you are referring here to subsection 10(2), which states that the plan prevails over the provisions of the collective agreement.

Ms. Laurier: Yes.

Ms. Gigantes: I am concerned about that notion that you are advancing because in whatever arrangement, whatever mechanism is used to establish some kind of equal pay arrangement within an employer's work place, surely they will have to hold that aside and have it prevail in the sense that it is protected and out of reach of the collective bargaining process or, over time, we can see through attrition a disappearance of any gain that has been made by women on the question of equal pay.

Ms. McCuaig: What disturbs us about this particular section, as we noted in the brief and which statistics prove, is that collective bargaining has done more to close the wage gap between men and women's wages than any legislation has done, even the best at the federal and the Quebec level. We are concerned about anything which overrides the collective bargaining process. We figure that this is primary. As we outline later, the way it is set up with the tribunals and commissioners, these are not neutral bodies. They are open to abuse. We are concerned about this type of enforcement procedure having precedence over the collective bargaining process.

10:30

Ms. Gigantes: I understand what you are saying. Perhaps "prevail" is the word we are looking at here. Perhaps you are looking for a change of word. It does seem to me that, whatever else one may say about the collective bargaining process in Minnesota, we are dealing with a different system than the system in Quebec and Canada, which is a complaints-based system that has proven highly effective in rare cases and totally ineffective in most cases. In Minnesota, the process of collective bargaining, whatever it has been in the past, has certainly been improved as far as women are concerned by the negotiation of agreements which come under the heading of pay equity agreements and which are outside the collective bargaining process.

They have closed the wage gap in a way that nothing else has done. Is that not right? It seems to me that if one establishes the mechanism, whatever it is, whether we like it or not--I personally do not; I agree with many of your comments--and whether it is satisfactory or not, if we get some kind of accommodation, it has to be protected, because it can be eaten away again, even where there is collective bargaining.

Ms. McCuaig: Where this section becomes more dangerous is that the civil service is very restricted in what it can bargain for, in its right to back up its bargaining and to demand the right to strike, etc., but there have been big gains specifically addressing the equal pay question made in the broader public sector through the collective bargaining process.

Ms. Gigantes: The payback is less in the civil service than it is in the broad public sector and less in the broad public sector than it is in the private sector.

Ms. McCuaig: Overall, I think you will have to agree that where unions exist--

Ms. Gigantes: It helps.

Ms. McCuaig: Yes, immensely. Here you have a collective action which is establishing wages, with all the restraints that are on the trade union movement at this time, particularly public sector workers, being overridden by a process which is fundamentally--

Ms. Gigantes: I think to say "prevail" equals "overridden" in the operation of this clause is to stretch it. I am concerned about that. It is a notion I have heard before and I would like you to go back and take a hard look at that, because I think what you may want is a different word. It may be a word that just drives everybody in the labour movement nuts, but I think you have to have some word which suggests that once you have pay equity accommodation in wages, then it is going to have to be protected and that protection has to be maintained.

Ms. McCuaig: We certainly do not object to protection.

Ms. Gigantes: That means hiving it off and casting it in concrete in some sense. If you do not like the word "prevail," let us think of another word.

Ms. McCuaig: Perhaps you can answer our question: if this act is brought over to the larger public sector, once the pay equity plan is in place, will unions be prevented from bargaining around equal pay considerations for increased wages for women workers? Will they then also be prevented from striking for equal pay? Whatever pay equity plan wage adjustments are implemented, will they override the collective bargaining process so that the unions will not be able to make additional gains for the workers through collective bargaining?

Ms. Gigantes: I can see no reason that should be the case.

Ms. McCuaig: There is no guarantee.

Ms. Gigantes: What you are talking about is a minimum that gets established by provincial legislation.

Ms. McCuaig: There is no guarantee in this act.

Ms. Gigantes: You cannot guarantee a damned thing in the collective bargaining process, no matter what you put in any act.

Ms. McCuaig: There can be a section in the act stating that this does not prevent a bargaining agent, as the wording is, from putting equal pay on the table when it comes to negotiations.

Ms. Gigantes: Do you think if we put that in the act it would make any difference in a collective bargaining situation? I think not.

Ms. McCuaig: I think it does. I have been in collective bargaining when there were wages controls in place and it took 30 seconds for the employer to show up and say the government--

Ms. Gigantes: That is different; that is where you have a negative restraint. You are saying we can put something in the legislation to say that even though we established a minimum of what is called pay equity under this plan, that does not mean workers cannot advance in the process of collective negotiation a proposal to the employers that women's wages be advanced further. There is nothing to prevent that anyway.

Ms. McCuaig: There is. Farther on, we say the increase must be at least one per cent, but we also say there is nothing to stop the employer, in this act at least, from going above the one per cent. Are we just imagining it or is there a real danger that this act could be construed to hold down women workers' increases to one per cent?

Ms. Gigantes: Anything that dispels that impression is important to look at in the bill. There I would agree with you. If those words and the lack of that kind of language create that impression, then they have to go.

May I ask you one other question? I will try to be very brief. It deals with the essential crux of your proposal to us, as I understand it. It is covered on page 7, your recommendation (D). You have suggested you do not like the mechanism proposed by the plan, you do not like the predominantly male and female groups, you do not like the way the pay equity plans are constructed and you do not like the way the comparisons are set up in that mechanism.

You say what you think we should have overall is a proactive bill, but the suggestion is the bill would be proactive in involving both government and business specifically in providing a fund to ensure that equal pay for work of equal value is achieved within a defined time period. Am I right in understanding that you are proposing that proactivity be related to the funding rather than to the creation of a plan or a program by which employers, both public and private, reach some kind of goal of pay equity which has been identified in some way?

Ms. McCuaig: We were saying that a wage gap exists--you have the figures yourself; 22 per cent in the public service and 50 per cent in the private--so you determine the data available that determine there is a wage gap. You provide a fund that will answer whatever discrepancy there is in that wage gap. Then you have a definable time period as a target in government and business by which this wage gap must be closed. After that, there still must be a mechanism to ensure that women do not fall behind, that once they have caught up--

Ms. Gigantes: How do you do that without comparing jobs in some way?

Ms. McCuaig: When you get into individual cases, jobs would have to be compared and there would have to be a model scheme for that happening. We are concerned that you do a blanket evaluation of the entire public service, which again interferes with the collective bargaining systems now in place.

Ms. Gigantes: Remember, we are not talking about a public service bill. These are your recommendations for a bill that is going to cover the public and private sectors. How do you do this in the private sector? Let us leave the public service out of it for a moment.

How do you establish how much the fund should be that you have called for by a proactive method, unless you have some way of deciding how much comparison is to be made between male and female jobs as opposed to wage rates? I do not understand how you just compare wage rates. You obviously do not do an analysis of wage rate by wage rate of each and every job cross-permuted across the total employment of Ontario.

Ms. McCuaig: You take an establishment, a corporation, whatever the final jurisdiction would be. The employer would be required to hand over to a commission its data on the male and female wage rates. The commission would establish what the wage gap is. It would determine what type of fund would be necessary to close the wage gap.

10:40

Ms. Gigantes: So what you would do is average all the female wages and say, "That is what the average female worker gets," and do the same for males and compare those.

Ms. McCuaig: No, you would not average them. How do we determine the wage gap now?

Ms. Gigantes: That is what I am asking you, because I have not understood clause (d).

Ms. McCuaig: It would be an average, but individuals within the job categories would be able to compare their work to comparable male jobs in the establishment.

What this gets around and what is contained in the act is that you talk about a job classification and then you talk about a representative job level in the classification. That is like averaging. I suppose your average in most job classifications is rated towards the bottom. That is the way wages are determined; you try to have as many people in the lowest-paid categories as you can. It becomes partly unfair for whatever across-the-board or presented settlement is found as a wage adjustment.

Ms. Gigantes: But you would still be comparing groups of jobs; you would not compare each and every job.

Ms. McCuaig: It would depend on the corporation and the number of employees. This is something that could be left up to the commission to determine. There could be guidelines.

Mr. McLennan: May I say a word?

The Acting-Chairman: Yes.

Mr. McLennan: In Ontario there is already a process whereby job evaluation is deemed straight away. In organized plants, particularly among auto workers, there is no question that a woman worker in the auto industry gets the same as a male worker doing the same kind of work. It depends on the strength of the union. That is part of the whole process. We are also calling for easier legislation for organizing the unorganized, of which women are the main part. That would be one of the steps to increase women's wages, along with affirmative action and other programs. Those have to be kept in mind.

As well, if you look at the situation in Minnesota, they do not have a political party in the United States that comes out of the working class at this time. Ontarian and Canadian workers have this advantage over American workers. Perhaps they will have to resort to different methods than are used in Canada to increase their wages. I think it is unfair to compare American and Canadian workers.

We also have what you would call a more expensive dollar, in our terms. Their cost of living is down, compared to ours in Canada. You cannot make a straight comparison, although I think the point is well taken that you accounted for the forms outside. I think it is to Canada's benefit at this time, particularly with the situation of free trade, that Canada has its own forms that continue. It has a political party at this time, represented by the

New Democratic Party in the Legislature, that puts forward workers' interests, which are sometimes denied in the United States. It makes a difference.

The Acting Chairman: Are there any other questions? Thank you very much for your presentation. We appreciate your coming.

The next group is the York University Staff Association. Would representatives of the York University Staff Association come forward? They may have stepped out for a few minutes, so we will just have a pause until they return. Their submission is number 12.

We will now hear from the York University Staff Association. As you heard earlier, you have an hour for your presentation and for questions from the committee. Please identify yourselves and carry on with your presentation. Everyone has a copy.

10:50

YORK UNIVERSITY STAFF ASSOCIATION

Ms. C. Harte: I am Celia Harte, president of the association.

Ms. Player: I am Jane Player, executive administrative secretary.

Ms. Anderson: I am Janice Anderson, chair of the job evaluation committee for YUSA.

Ms. C. Harte: The York University Staff Association represents more than 1,000 clerical, administrative, library, computer and technical service workers at York. Approximately 80 per cent of our members are female and we have a profound interest in establishing equal pay for work of equal value.

We are a member of both the Equal Pay Coalition and the Confederation of Ontario University Staff Associations and support the positions of both those organizations with respect to Bill 105. We are part of what has come to be called the extended public sector. Given that the Progressive Conservative Party has recently joined the New Democratic Party in calling for extension of the legislation in amended form, it is even more essential that we make our views known. As unionized workers, we also have particular concerns about the proposed legislation and its relationship to the collective bargaining process.

We would, first, like to explain a little bit about our job categories. We have three general categories of jobs. One is the computer series. There are eight job levels within the series with salaries ranging from approximately \$18,300 to \$35,000. We have approximately 65 computer series positions which, taken as a group of jobs, are approximately 62 per cent male. However, the two lowest pay levels of the computer series are female predominant; they are data entry operators. Men are predominant in the upper levels of the classification series and are mostly senior computer programmers.

Where we use the term "predominant," we refer to the 60-70 per cent that is in the bill.

Technical series has 12 subseries. Some of the examples are duplicating-bindery operators, media maintenance operator-technicians, lab technicians and craftspersons. Salaries range from \$17,400 to \$39,000. As a whole, the technical series, which is about 95 positions, is almost 74 per cent male. Again, women are more highly represented at the low and middle

salary levels. The highest levels are almost entirely male jobs, particularly in the media maintenance and craftsperson categories.

The graded positions which include all the others are primarily clerical and library positions. We have grades 2 to 8 with salaries ranging from \$16,746 to \$28,197. Grades are determined by applying a job evaluation system which, we believe, is a form of the Hay's system. The graded positions are predominantly female; more than 80 per cent. The representative group would be the grade 4 level with a salary of \$18,739. We also point out that, for reasons we have yet to understand, we have fire inspectors, typesetters, graphic designers and jobs such as those within our graded positions.

The computer and technical series positions are evaluated under a different system. The fact that we have different systems applying to our different jobs within our bargaining unit is a problem we have raised in our current negotiations.

The bill provides for an initial 90-day period during which the employer and the union negotiate to agree on a pay equity plan. If agreement is not reached, either party may refer the question to a single arbitrator appointed by the minister.

These provisions leave more questions unanswered than they answer, and they leave a number of areas of concern.

As a negotiated pay equity plan, what does "negotiate" mean in this bill? Can we negotiate a plan during the life of our current collective agreement or do we have to wait for the normal negotiation time?

In terms of time limits, do the parties have to reach an agreement within 90 days? If not, is there a time limit?

With respect to resolving disputes, can we apply for conciliation and the other forms that are available to us under our normal negotiation process or is the minister-appointed arbitrator our only recourse?

Since the bill allows only for comparison of female-predominant and male-predominant groups of jobs within the bargaining unit at this stage, it is likely that the matter will go to arbitration. It is in the employer's interest to narrowly interpret the meaning of "a group of jobs" to minimize the effect of the legislation. For obvious reasons, it is in the union's interest to do the opposite. For instance, we would argue that data entry operators constitute a female-predominant group of jobs, even though they are included in the computer series category.

The arbitration process under this legislation also leaves questions. We do not know whether it is the same as that with which we are now familiar. We have no input about the choice of an arbitrator in the bill as it now stands, although our current collective agreement provides for alternatives to having the minister appoint a single arbitrator. Right now, we can either have a three-party board with each of us having a nominee or we can mutually agree upon a single arbitrator.

After the pay equity plan is filed with the commission, the union's role is less clear. Section 10 of the bill states, "A pay equity plan prevails over the provisions of all relevant collective agreements..." and the pay equity plan is considered to be incorporated as part of the collective agreement. It seems we may complain to the commission at various points and that we must be

consulted when a comprehensive plan is being established to cover all of the union and nonunion groups at York University.

However, the legislation also allows individual employees who belong to a union to file complaints. Within the current labour relations context, it would normally be the union, as the exclusive bargaining agent, which would file complaints on behalf of the individual employee. What if an individual does not agree with a pay equity plan that is negotiated by the parties and ratified by the union membership? The complaint procedures outlined in the legislation seem to be inconsistent with the Ontario Labour Relations Act.

We are also very concerned that this legislation may, in effect, prohibit any further collective bargaining with respect to inequities in our current job evaluation and classification systems. As I mentioned, in our round of negotiations which are still ongoing, one of the things we have tentatively settled on is a joint committee to review our current evaluation system. We are not sure what the status of that type of activity would be.

The legislation states that all job levels within a predominantly female group of jobs will receive the same percentage increase as that determined by the representative job level. A percentage increase will further widen the gap between low-paid and high-paid jobs. This formula, although convenient, is inconsistent with the principles of equal pay for work of equal value, and in fact may reinforce pay inequities. Ironically, within our union's graded positions, the lowest-paid job level is predominantly male. These men need real legislation on equal pay for work of equal value. As manual workers, they have suffered from their inclusion in a predominantly female "white collar" union. They are mostly people who work on the loading docks, stackers in the library and those types of jobs.

This also underlines the need for equal value legislation for all workers, male and female. People must be paid consistent with the value of their jobs. For the same reason, we object to pay adjustments being made by using the lowest pay rate in comparable male-predominant jobs as the basis of comparison. It is also essential that we have access to information about rates of pay and job descriptions for all other employee groups within the university for comparison purposes.

11:00

We are opposed to the exclusions listed under section 8 of the bill. As was stated in the Confederation of Ontario University Staff Associations' presentation, these workers are already discriminated against in their pay and benefits. The use of casual employees in particular has been increasing in the universities, and their exclusion from this legislation would reinforce our employer's incentive to rely on them rather than create full-time jobs.

We would also point out that the exclusion of students, if this bill is extended, may also create problems. One of the bargaining units at York, Canadian Union of Educational Workers unit 1, consists entirely of full-time graduate students who work primarily as teaching assistants. Would they be excluded?

As workers in a grossly underfunded post-secondary education system, we must reiterate the point made by COUSA. It is essential that additional funding be provided to the universities specifically for the purpose of redressing pay inequities. These funds must be earmarked and monitored, and base operating funds must be increased to maintain the new pay levels. In any

event, the legislation has to indicate that any pay increases are separate from and in addition to any kinds of normal wage increases that are negotiated.

Although we are heartened by the attempt of the current government to take some action to correct historical inequities in pay based on gender, we are extremely disappointed with the proposed legislation. We are disappointed that a single bill covering all workers, public and private sector, men and women, part-time and full-time, has not been tabled. We do not feel that Bill 105 ensures equal pay for work of equal value, and that, after all, is what we really want. The pay equity plans will not achieve the justice that workers, especially female workers, deserve. Many of us will not be affected at all if we do not fit into the 60-70 per cent categories that have been deemed worthy of this legislation. Many of us, especially women, will still have to look forward to minuscule pensions once we retire.

To conclude, if this bill is not substantially amended, we do not wish it to be extended to the broad public sector. We would rather have nothing and take our chances.

The Acting Chairman: Thank you. You have raised three specific questions in your presentation and perhaps we can have them answered by a representative from the Ministry of Labour.

Dr. McAllister: I will go through some of the questions raised on page 3 of your brief. You ask what it means to negotiate a pay equity plan, whether there is a time limit related to that negotiation period and whether you can negotiate a pay equity plan during the life of the collective agreement.

The bargaining process for pay equity plans is to take place separately from negotiations related to your regular collective bargaining process. Regardless of the stage or state you may find yourselves in in relation to your employer in your regular negotiations, you and your employer will adhere to or, if you are covered by the bill, would have to adhere to the time lines set out in the bill for negotiating a pay equity plan. There will be three months to negotiate the first pay equity plan covering the separate bargaining units. If you fail to reach an agreement during that time, the matter will be referred to arbitration.

There is a provision in the bill for what might be considered to be a rather expedited arbitration process of three months. If the single arbitrator who has been appointed by the minister fails to produce within that time period, then the minister will appoint another arbitrator. It is my understanding that this is somewhat different from the process of arbitration that you are used to.

However, it is the intention to have a proactive pay equity program implemented within a very short time for public service employees without time limits. For example, on the arbitration process you could get into a situation where you were waiting about a year for an arbitrator to make a decision and then the proactiveness of the program would be significantly damaged in terms of making redress available to women quickly. You cannot apply for conciliation under this bill related to pay equity. Obviously, your normal process of conciliation would carry on in relation to your regular collective bargaining process.

You raised the question of whether the identification of predominantly male and predominantly female groups of jobs would likely lead you to

arbitration, given that you perceive you may have a different interest from your employer in the identification of those groups. Certainly, if you cannot agree in the negotiation with your employer about the contents of the pay equity plan--and one part of that content is the identification of the groups of jobs--it may lead you to arbitration. So you are correct; that could be the case.

In the course of your negotiations, however, you might have agreed upon other aspects of the pay equity plan, such as the selection of your job evaluation system, but that could be an outstanding issue where you might find yourself with a difference of opinion with the employer and end up in arbitration.

Ms. Gigantes: I would like to thank you for your brief. The questions you raise are very clear and sharp and the examples you raise are very clear and sharp.

If you look at page 4 in the information you have given us about data entry operators, from an employees' point of view, how would you see the best way of going about trying to compare jobs? I assume you accept the notion of comparing jobs--

Ms. C. Harte: Yes, we do.

Ms. Gigantes: --so that women in the data entry operator group at the low end of scale were compared with groups, predominantly male; I guess you would want to make the comparison. Where then would you make the comparison? To whom would you compare it?

Ms. C. Harte: The problem we have is that we now want a single system to cover everyone. We think the current system that covers our graded positions is entirely inadequate for our needs because it already discriminates, in effect, against clerical kinds of work.

Ms. Gigantes: That is the modified Hay system.

Ms. C. Harte: We think it is some form of Hay. We do not even know that for sure. It looks like one, but--

Ms. Gigantes: You did not indicate how many people are in each of these groups. Do you have a rough idea? Are there more in the graded positions group?

Ms. C. Harte: Yes. There are only about 65 computer series, 95 technical series, and the other 800 and whatever are graded. We need to overhaul our current system. To use comparisons with our existing system is not going to help very many people. We need to take into account that certain skills are worth something, such as typing and communication skills and working conditions.

I do not know why the data entry people were ever put in computer series, for instance. Their work is much more like some of our graded positions. Our switchboard operators are graded in terms of the repetitive kind of work and their working conditions, which also get virtually no points under our graded system.

The whole thing is a problem. We want to renegotiate an entire job evaluation system which would be very different from the one we are living

with now and which could cover all employee groups. I think three months might be a little tight to do that.

Ms. Gigantes: I was just going to ask you that.

Ms. C. Harte: One of the reasons we are concerned about those kinds of time frames is that Laurentian University just went through the exercise of jointly developing a new job evaluation system. They cover most of the same kinds of employees as our bargaining unit does; they are much smaller than we are. It took them eight months of fairly solid work to come up with a system, test it out and make sure it worked in the way it was intended to work and to redistribute the jobs within that.

It is not entirely clear if within that three months you can make a commitment to go so far, or whether we are going to have to do something like choose one of the new Hay systems. That seems to be the popular one because they are doing a very good selling job, we understand. It will be easier for everyone just to say, "Okay, this is going to be the system and everyone is going to get it."

Ms. Gigantes: If I understand it, this is really a question for the ministry. What is contemplated under the bill is that the plan be finished. It is not just the choosing of a methodology in a plan but that a plan be filed within three months.

Ms. C. Harte: The plan will have to be filed. One component of the plan will be the selection or development of a job evaluation system. For example, in those negotiations, you could approve or reach an agreement as to more or less most of the main features that you would want a particular plan to have and you could agree to work further on it for the next one, two or three months, as might be required, during the implementation period, or you could negotiate to adopt the Hay plan. I think it is fairly flexible.

11:10

Ms. Gigantes: One point that is made very strongly in this brief is that when you are dealing with some categories of work, it does not matter whether they are filled by male or female people, they are underpaid compared to the value of the work. That is the presumption on the part of the people presenting to us here.

My understanding of the operation of the bill is that, because of the mechanism the bill sets out and the predominantly female/predominantly male confines of the mechanism, in a situation at York, if everybody wanted it, you are not going to be able to satisfy the requirements of this bill by saying that for the first five entry levels you are simply going to raise pay rates by X thousand dollars per year. One of the things you are suggesting to us is that there should be enough flexibility in whatever mechanism is outlined in a bill, this bill or a larger bill, to permit flexibility around that mechanism.

Ms. C. Harte: The other thing we are concerned about is that either party may refer within the 90 days, which seems to be what it says, because it says either party may refer. It does not say it shall be referred.

I am still not sure how it gets to arbitration if neither party refers it there, but it is going to be in the employer's interest to want to have to take a plan that already exists, rather than have to work out a plan with the

union that may not be one they can go by off the shelf. We are very concerned about being in a position where it is going to be imposed upon us to have to go the simple route, because if it goes to an arbitrator, an arbitrator is not going to sit there and start developing a new job evaluation system.

The Hay system has now been taken up by Manitoba as well as Minnesota; in other places they are doing these two-day presentations all over the place. Management consulting firms are going to do very well out of all this, and it is not going to help us develop what we had intended to see happen. We want a new system, we want it to be based on our needs and we want it to ensure that we feel it has attained equal pay for work of equal value.

We have made some progress with our management, we think, because it is now at least willing to look at our current system and at identifying inconsistencies with equal pay. Before, it used to say there just was not any. Period. That was the response.

Across the bargaining table this summer, our employer and our union made it very clear to each other that neither was happy with Bill 105 as a model. That was our management as well as us. We had problems with it. I do not know who drafted the bill, and it is nothing personal, but I am not sure there is an appreciation of how complex job evaluation can be. We accept having job evaluation. We are comfortable with that because we know what it is.

Our employer did not feel the bill reflected an understanding of labour relations. Another serious area of concern is that if we negotiate and agree upon a plan and individuals can also make complaints outside of the union context, it undermines the entire union-employer negotiations process. If we had contracts where one of our members could appeal it whenever he or she wanted if he or she did not like something, what is the point of negotiating a contract?

Ms. Gigantes: The appeal is time-limited. The amount of time devoted to consideration of an appeal is time-limited. I think there is another argument that can be made in situations I imagine will arise in some context where a union has taken a less than aggressive attitude on the issue of equal pay. I am sure you can imagine that too.

Ms. C. Harte: We still think it is a serious problem.

Ms. Gigantes: Can I ask you this? If in the bill there was enough time at the front end for the establishment of a plan, whatever plan--let us not just look at the mechanism outlined here, but imagine that this bill offered several mechanisms--do you think your employer would be any more willing to sit down and go through the painful process?

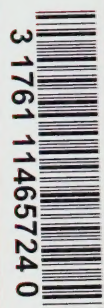
Ms. C. Harte: I do not think our employer is going to be very happy with having to go through a process at all. I think at least it would be more difficult to justify going to arbitration immediately.

Ms. Gigantes: Thank you.

The Acting Chairman: Anyone else? Thank you very much for your presentation. We appreciate your comments.

The committee recessed at 11:15 a.m.

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